STATEMENT OF THE FACTS

This case arises out of the investigation of 11-year old LaCresha's involvement in the death of two-year old Jayla Belton ("Jayla") in 1996. LaCresha and her siblings lived with her grandparents, R.L. and Shirley Murray, also LaCresha's adoptive parents. The Murrays operated a day facility out of their home. In May 1996, Jayla, who routinely attended day care at the Murray home, was dropped off by her mother's boyfriend. During the course of the day, Jayla was listless and became ill. When it became apparent that Jayla was seriously ill, R.L.Murray and LaCresha took Jayla to the hospital where she was pronounced dead. An autopsy conducted the following day revealed that Jayla's death was due to internal injuries and ruled her death a homicide.

Law enforcement authorities immediately removed all the children from the Murray home. LaCresha, and one of her sisters, were sent to the Texas Baptist Children's Home. a contract-provider with the State of Texas Child Protective Agency for foster care, in Round Rock, Texas. Three days after LaCresha was removed from her home, Detective Reveles directed Detectives Pedraza and Eells, along with Child Protective Services employee McGowan, to interview LaCresha. At that moment, LaCresha became a "target defendant" in Jayla's death.

Before the interview, Detectives Reveles and Pedraza and Assistant District Attorney Emmons agreed to interrogate LaCresha without complying with the law requiring that LaCresha be taken before a magistrate and not be questioned without a parent, guardian or attorney present. In doing so, these individuals conspired to avoid and ignore "clearly established" law, both in their conspiratorial actions

to avoid taking LeCresha before a magistrate and in the interrogation actions of the detectives and child protective services worker. No exigent circumstances existed to require such haste in circumventing a hearing before a magistrate or in having an *ad litem* or defense attorney appointed to protect LeCresha's rights in the matter. In fact, an attorney was appointed to LaCresha, but not until after the illegal police interrogation had been completed.

The decision of the Fifth Circuit Court of Appeals admits that "It is true that the officers wrongfully elicited LaCresha's conbession during her interrogation and that this confession was later wrongfully admitted at trial and used against her, and ultimately resulted in her conviction; . . ." [Appendix D]. LaCresha was tried twice. The first conviction was overturned by the trial judge on his own motion. The second time the judge sentenced her to twenty-five years in the custody of the Texas Youth Coimission. The Texas Court of Appeals reversed her conviction because of the violation of her U.S. Constitutional rights. [*In re. L.M.*, 993 S.W.2d 276, (Tex.App. 1999, *pet. denied.*). LaCresha brought suit in the federal district court for damages against all of the defendants, setting out in her pleadings specific judicial findings to support her allegations of the deprivations of her civil and constitutional rights. [Exhibit A].

REASONS FOR GRANTING THE WRIT

The Fifth Circuit Opinion in this case is in direct conflict with the holdings of the United States Supreme Court regarding 42 U.S.C. §1983 and the Fifth Amendment, Fifth Circuit law, and the law of every other federal circuit that has considered the

issue of this case. For these reasons, this writ should be granted.

ARGUMENT AND AUTHORITIES

The Fifth Circuit opinion in this case allows two unethical assistant district attorneys and four overzealous detectives to violate an 11 year old child's constitutional rights under the Fifth Amendment and not be responsible for the consequences of their actions because, as a successful result of their efforts, a District Judge wrongfully admitted the coerced confession from the 11 year old child into evidence. The Fifth Circuit admits that the actions of the detectives violated LaCresha's constitutional rights: "It is true that the officers wrongfully elicited LaCresha's confession during her interrogation and that this confession was later wrongfully admitted at trial and used against her, and ultimately resulted in her conviction; yet a trial judge twice heard all the evidence concerning the circumstances surrounding LaCresha's confession and twice admitted it into evidence." [Exhibit D]. The Fifth Circuit completely ignores the actions of the unethical assistant district attorneys. No where in the opinion does the opinion refer to the unethical conspiratorial actions of the assistant district attorneys. The only reference to the assistant district attorneys is when they refer to a "conference" that assistant district attorney Emmons had with the overzealous detectives and planned the method to interrogate

LaCresha. [Exhibit D]. The District Court found that the actions of the assistant district attorneys were not covered by prosecutorial immunity because they were acting as police. *Burns v. Reed,* 500 U.S. 478, 496 (1992).

It is clear from the Fifth Circuit opinion that court is aware of the two-prong test set forth by the U.S. Supreme Court to determine whether an official sued under §1983 is entitled to qualified immunity: "In undertaking a qualified immunity analysis, we must first determine whether the plaintiff has suffered a violation of his constitutional rights and, if so, whether a reasonable official should have known that he was violating the plaintiff's rights." [Opinion, citing *Hope v. Pelzer*, 536 U.S. 730, 736, 739 (2002)]. In its analysis of the first prong of the Supreme Court's qualified immunity test, as to whether LaCresha's constitutional rights were violated, the opinion declares this to be the case [Exhibit D]. Instead of then properly addressing the second prong, whether the law of LaCresha's rights under the Fifth Amendment was "clearly established," at the time of the defendant officials' conduct such that they would have reasonably known they were violating her rights, the Fifth Circuit court circumvents the second prong by instead addressing whether it was "clearly established law" in the Fifth Circuit at the time, that the officials could be held liable under §1983 once the state judge allowed the unconstitutional confession they obtained into evidence. [Echibit D]. By adopting and proffering its own second prong to

the qualified immunity test, the opinion effectively deprives LaCresha of any recovery, because prosecutors and judges are totally immune for actions taken during a trial. [Exhibit D]. Here, Supreme Court law is violated because the Supreme Court makes it clear that even under *Chavez v. Martinez*, 538 U.S. 760 (2003), the assistant district attorneys and the detectives are still subject to liability. The District Court determined that the assistant district attorneys were not entitled to qualified immunity because their actions, all taken before the interrogation of 11 year old LaCresha, were actions of conspirators, and not merely conferencing with the detectives. [Appendix C]

The procedure for determining whether an official is entitled to qualified immunity in a § 1983 context is clearly set forth as the two prong test long recognized by the Fifth Circuit and the other Federal Circuits, as determined by the U. S. Supreme Court, as follows: 1) whether the official's conduct violated a constitutional right, and 2) whether, in light of clearly established law at the time of the conduct, a reasonable official would have known that his conduct may violate that constitutional right. See *Saucier v. Katz,* 121 S.Ct. 2151, 533 U.S. 194 (2001), *Anderson v. Creighton,* 107 S.Ct. 3034, 483 U.S. 635 (1987), *Harlow v. Fitzgerald,* 102 S.Ct. 2727, 457 U.S. 800 at 819 (1982), *Malley v. Briggs,* 106 S.Ct. 1092, 475 U.S. 335 (1986), *Groh v. Ramirez*, 540 U.S. 551, 124 S. Ct. 1284, 157 L.Ed.2d 1068 (2004), *Buenrostro v. Collazo*, 973 f.2d 39 (1st Cir. 1990), *Kerman v. City of New York*,

374 F.3d 93 (2nd Cir. 2004), *Warner v. Orange County Dept. of Probation*, 173 F.3d 120 (2nd Cir. 1999), *U.S. v. Burzynski*, 819 F.2d 1301, (5th Cir. 1987), *Baranski v. Fifteen Unknown Agents of the Bureau of Alcohol, Tobacco and Firearms*, 2005.C06.0000309 (versuslaw)(6th Cir. 2005), *Cooper v. Dupnik*, 963 F.2d 1220 (9th Cir. 1992)(en banc), *Davis v. Hall*, 375 F.3d 703 (8th Cir. 2004), *Jones v. Cannon*, 174 F.3d 1271 (11th Cir. 1999), *Holland v. Harrington*, 268 F.3d 1179 (10th Cir. 2001), *Waterman v. Batton*, (2005.C04.0000001)(versuslaw) (4th Cir. 2005).

It is a misstatement of the law established by the U.S. Supreme Court for the Fifth Circuit to hold in this case that the unethical assistant district attorneys and the overzealous detectives, who violated a minor citizens' clearly established constitutional rights, are not subject to liability because they presented an unconstitutional coerced confession to the state trial judge, who erred in admitting it into evidence. The Fifth Circuit reasons that, because the officials knew the confession was unlawful and unconstitutional, they could not reasonably have known it would later be admitted into evidence against LaCresha, and thus the state judge's decision to allow it into evidence was the actual proximate cause of the harm done to her, completely ignoring the fact that these officials presented this confession to the court as permissible evidence. The U.S. Supreme Court has specifically indicated that it will "not allow the official who actually knows that he was violating the law to

escape liability for his actions, even if he could not 'reasonably have been expected' to know what he actually did know. Thus the clever and unusually well-informed violator of constitutional rights will not evade just punishment for his crimes." *Harlow v. Fitzgerald*, 102 S.Ct. 2727, 457 U.S. 800 at 821 (1982) (concurring opinion by Justice Brennan).

Under Texas law the theories of sole cause and intervening cause may be established as a matter of law. *Teer v. J. Weingarten, Inc.*, 426 S.W.2d 610, 612 (Tex. Civ. App.—Houston [14th Dist.] 1968, writ ref'f n.r.e.). These two theories relating to proximate cause are submitted to the jury by instruction if raised by the evidence. *McDonald Transit, Inc. v. Moore*, 565 S.W.2d 43, 45 (Tex. 1978) An intervening cause that is reasonably foreseeable by the actor is not such a new and independent cause as to break the chain of causation between the actor's negligence and injury complained of to the extent of relieving the actior of liability for such injury. *Teer* at 426 S.W.2d 614. The intervention of an unforeseen cause of the victim's injury does not necessarily mean that there is a new and independent cause of such character as to constitute a superseding cause that will relieve the actor of liability. *Teer*, at 426 S.W.2d at 614. The intervening cause of the victim's injury, even if unforeseeable may be a concurrent cause if the chain of causation flowing from the actor's original negligence is continuing and unbroken. Id.

It is a well settled principle of Texas law that if an intervening cause was foreseeable by the initial wrongdoer, then the initial wrongdoer's negligence may be considered a proximate cause of the injury, notwithstanding the intervening cause. See *Boner v. Wingate,* 78 Tex. 33, 14 S.W. 790 (1890), *Texas & P.R. Co. v. Bigham,* 90 Tex. 23, 38 S.W. 162 (1896); *City of Austin v. Schmedes*, 154 Tex. 416, 279 S.W.2d 326 (1955).(Holding the "The rule seems to be that when an intervening illegal acts is of such a nature that it might have been anticipated, and is such that the defendant should have provided against it, he will be liable for breach of the duty notwithstanding that the illegal act was the immediate cause of the injury. 65 C.J.S., Negligence §111, p. 700; 78 A.L.R.480.)

Under Texas law the doctrine of intervening cause will not provide an escape of liability for these actors under these circumstances. Surely they knew that the confession they were about to obtain was intended to be used in the criminal trial of LaCresha. The fact that it was admitted by the Trial Court in her criminal case is not an intervening cause so as to provide these state actors from liability under 42 U.S.C. §1983 and the Fifth Amendment to the Untied Stated Constitution.

In determining whether an official is entitled to qualified immunity from suit under §1983, the First, Second, Fourth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits have all interpreted and applied the Supreme Court's two-prong test for

qualified immunity in §1983 cases in the same manner. Applying the facts of the case to the test, they all first determine whether the official's conduct violated a constitutional right, and if so, thereafter address whether the law affording that right and prohibiting the conduct was clearly established at the time of the conduct, such that the assistant district attorney and the officers should have reasonably known they may be violating that right. See *Buenrostro v. Collazo*, 973 f.2d 39 (1st Cir. 1990), *Kerman v. City of New York*, 374 F.3d 93 (2nd Cir. 2004), *Warner v. Orange County Dept. of Probation*, 173 F.3d 120 (2nd Cir. 1999), *Baranski v. Fifteen Unknown Agents of the Bureau of Alcohol, Tobacco and Firearms*, 2005.C06.0000309(versuslaw) (6th Cir. 2005), *Cooper v. Dupnik*, 963 F.2d 1220 (9th Cir. 1992)(en banc), *Davis v. Hall*, 375 F.3d 703 (8th Cir. 2004), *Jones v. Cannon*, 174 F.3d 271 (11th Cir. 1999), *Holland v. Harrington*, 268 F.3d 1179 (10th Cir. 2001), *Waterman v. Batton*, (2005.C04.0000001)(versuslaw) (4th Cir. 2005).

Further, other Federal Circuits have not, as the Fifth Circuit in this case has done, held that intervention by a superseding cause "pretermits our consideration of whether she suffered a violation of a constitutional right that was clearly established at the time, and whether a reasonable official should have known that he was violating that right." [Exhibit D]. See *Kerman v. City of New York*, 374 F.3d 93 (2nd Cir. 2004)(finding an officer who arrested and took plaintiff to a psychiatric hospital

where he was detained without probable cause was not entitled to qualified immunity based on an assertion that the decision of the doctors was the proximate cause of the detention, holding, "The fact that the intervening third party may exercise independent judgment in determining whether to follow a course of action recommended by the defendant does not make acceptance of the recommendation unforeseeable or relieve the defendant of responsibility," citing Supreme Court decisions in *Malley* and *Warner*); *Baranski v. Fifteen Unknown Agents of the Bureau of Alcohol, Tobacco and Firearms*, 2005.C06.0000309(versuslaw)(6th Cir. 2005)(holding that because the official prepared the invalid warrant, he cannot argue that he reasonably relied on the magistrate judge's assurance that the warrant was sufficient and valid).

Further, the Supreme Court, not only in *Malley*, but in *Groh*, has specifically rejected this approach. *Groh v. Ramirez*, 540 U.S. 551, 124 S.Ct. 1284, 157 L.Ed.2d 1068 (2004) (holding that an officer who served a defective warrant was not entitled to qualified immunity, and may not argue that he reasonably relied on the Magistrate's assurance that the warrant was adequate and valid).

Further, the Firth Circuit opinion ignores other decisions of this Fifth Circuit where an official is not granted qualified immunity by virtue of superseding cause of an intermediary's intervention, when the official provides 'tainted' information to that independent intermediary. See *Gordy v. Burns*,

294 F.3d 722 (5th Cir. 2002), citing *Hand v. Gary*, 838 F.2d 1420 (5th Cir. 1988); *Taylor v. Gregg*, 36 f.3d 453 (5th Cir. 1994); *Shields v. Twiss*, 389 F.3d 142 (5th Cir. 2004). It is an unjust application of state tort law to hold that intervention of a Justice of The Peace's decision to admit a coerced confession, consideration by a grand jury of the confession, or the illegal admission of the coerced confession during trial, establishes an "intervening cause" that serves as a shield for the unethical assistant district attorneys and the overzealous detectives. The panel refers to its earlier decision in *U.S. v. Burzynski* as providing only a cursory analysis of "dicta" in *Malley*, which is outweighed by the precedent in the circuit, indicating that its rule in *Hand v. Gary* has prevailed in the circuit for decades. [Exhibit D]. In *Burzynski*, the defendant officials contended that because a U.S. Magistrate had issued the defective warrant, the chain of causation was broken, as held in an earlier 5th Circuit decision in *Jureczki v. City of Seabrook, Texas*. See *U.S. v. Burzynski Cancer Research Institute*, 819 F.2d 1301, 1309 (5th Cir. 1987). However, the *Burzyski* Court held, "Dr. Burzynski counters by correctly pointing out that the Supreme Court rejected the rationale underlying that broadly-stated rule in *Malley v. Briggs*." See *id*. It is unclear how the Fifth Circuit can now reject that holding in *Burzynski* as being too cursory an analysis, simply by stating in its present opinion that the Supreme Court's Decision on the issue of superseding cause in *Malley* was only dicta, and that *Hand* is controlling. Further, the *Hand* Decision

itself does not seem to support the Fifth Circuit's decision. In *Hand*, the 5th Circuit discussed three earlier cases, *Shaw*, *Wheeler*, and *Dombrowski*, indicating "we learn from all of these cases, that simply obtaining an indictment is not enough to insulate state actors from an action for malicious prosecution under § 1983. In all of these cases indictments were obtained, but the finding of probable cause remained tainted by the malicious actions of the governmental officials." *Hand v. Gary*, 838 F.2d 1420 (5th Cir. 1988), citing, *Shaw v. Garrison*, 467 F.2d 113 (5th Cir.), *cert. denied*, 409 U.S. 1024, 93 S.Ct. 467, 34 L. Ed. 2d 317 (1972), *Wheeler v. Cosden Oil and Chemical Co.*, 734 F.2d 254 (5th Cir.), modified on reh'g on other grounds, 744 F.2d 1131, 1133 (5th Cir. 1984), and *Drombowski v. Pfister*, 380 U.S. 479, 490, 85 S.Ct. 1116, 14 L. Ed. 2d 22 (1965). The law established by the 5th Circuit in earlier cases is not consistent with this Fifth Circuit decision. The Fifth Circuit opinion in this case does not even discuss whether the coerced confession was "tainted" information provided to the neutral intermediary, which would be consistent with the holding in *Hand*. Instead, what the Fifth Circuit opinion does is to create new precedent, that, without regard to factual circumstances of a particular case, when an individual's constitutional rights are violated by an official actor, so long as that official has provided that information to a neutral intermediary who then acted on the information provided, the official will be insulated from liability for constitutional

violations. This is a dangerous precedent, which effectively provides absolute immunity to any state actor who successfully obtains the desired outcome of his acts which violated an individual's constitutional rights. This ignores the established Supreme Court holding that provides LaCresha with an avenue to be compensated for the violent wrong done to her by these six individuals.

CONCLUSION

LaCresha, for the reasons stated herein, moves this Court to grant her Petition For Writ Of Certiorari, set the case for oral argument, and upon completion of this appeal process, reverse the holdings of the Fifth Circuit Court of appeals as being against established Supreme Court, Fifth, and other circuit law, return the case to the district court for trial on the merits, and for such other and further relief to which LeCresha may show herself to be justly entitled.

Respectfully submitted,

Frank P. Hernandez
Counsel of Record
716 Wayne Avenue
Dallas, Texas 75223
214- 821-1213
214- 821-1214 (Fax)
E-mail: fgeagle@aol.com

Martin J. Cirkiel
1901 E. Palm Valley Blvd.
Round Rock, TX 78664

512-244-6658
512-244-6014 (Fax)

Attorneys For Petitioner

CERTIFICATE OF SERVICE

I certify that a copy of the Petition For Writ Of Certiorari was mailed, regular mail, to Mr. Fred Hawkins, Esq., Assistant City Attorney, P. O. Box 1546, Austin, Texas 78767-1564, and to Ms. Elaine A. Casas, Esq., Assistant County Attorney, P. O. Box 1748, Austin Texas 78767 on this the _____ day of August 2005.

_____
Frank P. Hernandez

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CIVIL ACTION NO. A-02-CA-552-SS

LaCresha Murray, R. L.	*
Murray And Shirley Murray,	*
Individually and As Next	*
Friends of Cleo Murray,	*
Jason Murray, Tyler Murray,	*
And Trent Murray, And	*
Shantay Murray, Individually,	*
	*
Plaintiffs,	*

Vs.

Ronnie Earle, Individually	*
And As District Attorney Of	*
Travis County, Texas; Dayna	*
Blazey, Individually And As	*
An Assistant District Attorney	*
Of Travis County, Texas;	*
Stephanie Emmons, Individually	*
And As An Assistant District	*
Attorney Of Travis County,	*
Texas; Thomas Chapman,	*
Executive Director, Texas	*
Department Of Protective And	*
Regulatory Services; Angela	*

McGown, Individually And As Supervisor Of The Travis County Child Protective Services; Melissa Greer, Individually And As Case Worker, Travis County Child Protective Services; Megan Moore, Individually And As Case Worker, Travis County Child Protective Services; Stanley Knee, Chief Of The City Of Austin Police Department; Hector Reveles, Individually And As A Detective Of The Austin Police Department; Paul Johnson, Individually And As A Detective Of The Austin Police Department; Ernest Pedraza, Individually And As A Detective Of The Austin Police Department; Albert Eells, Individually And As A Detective Of The Austin Police Department; *

Defendants. *

PLAINTIFF'S ORIGINAL COMPLAINT AND
JURY DEMAND

Jurisdiction

1. This is an action that arises under 42 U.S.C. Sec. 1983, and the Fourth, Fifth, Sixth, Eight, Thirteenth, and Fourteenth Amendments of the United States Constitution, and the laws of the State of Texas relating to juvenile law, family code law, malicious prosecution, assault and battery, false arrest, false imprisonment, libel, slander, defamation of character and lost enjoyment of life.

2. This Court has jurisdiction over these matters pursuant to 28 U.S.C. Sec. 1331 and 28 U.S.C. Sec. 1343, and pendent state action jurisdiction.

3. All of the unlawful acts complained of occurred within the Western District of Texas, Austin Division of the United States District Court.

Parties

4. Plaintiff, LaCresha Murray ["Plaintiff" or "LaCresha"], is a citizen of the United States and is a resident of the County of Travis, State of Texas.

5. Plaintiffs R. L. Murray and Shirley Murray ["Plaintiff" or "R. L. Murray" or "Shirley Murray"] are citizens of the United States and are residents of the County of Travis, State of Texas. They sue individually and as Next Friends of Plaintiff Cleo Murray ["Plaintiff" or "Cleo Murray"], Plaintiff Jason Murray ["Plaintiff" or "Jason Murray"], Plaintiff Tyler Murray ["Plaintiff" or "Tyler Murray"]; and Plaintiff Trent Murray ["Plaintiff" or "Trent Murray"].

6. Plaintiff's Cleo Murray, Jason Murray, Tyler Murray, and Trent Murray, are minor aged children of Plaintiffs R. L. Murray and Shirley Murray, and they are citizens of the United States and reside in Travis County, Texas.

7. Plaintiff Shantay Murray ["Plaintiff" or "Shantay Murray"] is a citizen of the United States and she resides in Travis County, Texas. At the time of the occurrence made the basis of this suit she was a minor.

8. Defendant Ronnie Earle ["Defendant" or "Earle"] who is sued individually and in his official capacity as the District Attorney for the County of Travis, Texas. He supervised Defendant Assistant District Attorneys Dayna Blazey and Stephanie Emmons and participated in the decisions made

concerning the arrest, detention and prosecution of Plaintiff LaCresha Murray.

9. Defendant, Dayna Blazey ["Defendant" or "Blazey"], who is sued individually and in her official capacity is an Assistant District Attorney for the District Attorney's Office in Austin, Travis County, Texas.

10. Defendant, Stephanie Emmons ["Defendant" or "Emmons"], who is sued individually and in her official capacity is an Assistant District Attorney for the District Attorney's Office in Austin, Travis County, Texas.

11. Defendant Thomas Chapman, ["Defendant" or "Chapman"], is the Executive Director of the Texas Department of Protective And Regulatory Services, located in Austin, County of Travis, Texas.

12. Defendant Angela McGown, ["Defendant" or "McGown"], is an agent, servant and employee of the Texas Department of Protective And Regulatory Services, located in Austin, County of Travis, Texas.

13. Defendant Melissa Greer, ["Defendant" or "Greer"], is an agent, servant and employee of the Texas Department of Protective And Regulatory Services, located in Austin, County of Travis, Texas.

14. Defendant Megan Moore, ["Defendant" or "Moore"], is an agent, servant and employee of the Texas Department of Protective And Regulatory Services, located in Austin, County of Travis, Texas.

15. Defendant Stanley Knee, ["Defendant" or "Knee"], is the Chief of Police of the City of Austin Police Department, Austin, Texas.

16. Defendant Hector Reveles, ["Defendant" or "Reveles"], is an agent, servant and employee of the City of Austin Police Department. He is sued individually and in his official capacity as a detective in the Austin Police Department.

17. Defendant Paul Johnson, ["Defendant" or "Johnson"], is an agent, servant and employee of the City of Austin Police Department. He is sued individually and in his official capacity as a detective in the Austin Police Department.

18. Defendant Ernest Pedraza, ["Defendant" or "Pedraza"], is an agent, servant and employee of the City of Austin Police Department. He is sued individually and in his official capacity as a detective in the Austin Police Department.

19. Defendant Albert Eells, ["Defendant" or "Eells"], is an agent, servant and employee of the City of Austin Police Department. He is sued individually and in his official capacity as a detective in the Austin Police Department.

20. At all times relevant the Defendant Earle has continuously been and is now the District Attorney of Travis County, Texas. Defendants Blazey and Emmons were at the time of the occurrence of the unlawful acts made the basis of this suit, Assistant District Attorneys for the District Attorneys Office in Austin, County of Travis, Texas.

21. At all times relevant the Defendant Chapman has continuously been and is now the Executive

Director of the Texas Department Of Protective And Regulatory Services. Defendants McGown, Greer and Moore were at the time of the occurrence of the unlawful acts made the basis of this suit agents, servants and employees of the Texas Department Of Protective And Regulatory Services.

22. Plaintiff alleges that at all times herein relevant, Defendants and each of them acted as agents of one another, and as agents of the District Attorney's Office of the County of Travis, the Texas Department Of Protective And Regulatory Services, and the City of Austin Police Department, and in doing the acts or omissions herein alleged, were acting with the ratification and authorization of each Defendant.

Statement Of The Case[1]

Summary

23. On May 24, 1996, Jayla Belton, age two, died while in the care of the Murray family. During the investigation of the death of Jayla Belton, the Travis County Coroner, Dr. Robert Bayardo, determined the death to be a homicide.

24. During the investigation, City of Austin Police Department homicide detectives conspired with members of the Travis County District

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[1] Incorporated by reference herein as if set out verbatim as Exhibit 1 is the *Dallas Observer* October 18, 2001 article written by Carlton Stowers, which is an accurate account of some of the facts in this case.

Attorney's office, members of the Travis County Child Protective Services, a division of the Texas Child Protective And Regulatory Services Department, and employees of the Texas Baptist Children's Home to violate the civil and constitutional rights of LaCresha Murray, who at the time was a minor of eleven years of age, and the civil and constitutional rights of R. L. Murray, Shirley Murray, Shantay Murray, Cleo Murray, Jason Murray, Tyler Murray, and Trent Murray.

Statement Of Facts

25. On May 24, 1996 the following occurred:

8:00 a.m. Derrick Shaw delivered Jayla Belton to the Murray residence for day care keeping.

1:00 p.m. Julia Henderson observes Jayla Belton sweating.

2:45 p.m. Shantay Murray leaves the residence to go to work.

3:00 p.m. Jason Murray leaves the residence to go play baseball.

5:00 p.m. Alicia Turner picks up her twins and observers Jayla Belton sweating profusely.

5:30 p.m. LaCresha Murray carries Jayla Belton into the Brackenridge Hospital emergency room. She is driven there by R. L. Murray.

6:00 p.m. LaCresha Murray is taken to the Child Advocacy Center of Travis County Child Protective Services and is videotaped and interviewed by Tello Leal, a counselor with the Victim Services Unit of the City Of Austin Police

Department. LaCresha Murray is not considered a suspect at this time by the Austin Police Department. She is not given her Miranda warnings. She is videotaped without her permission or knowledge. She is not taken before a Magistrate prior to the interrogation and videotaping. After this questioning she is returned to the Murray residence.

R. L. Murray is taken to the Austin Police Department where he is interviewed and videotaped, without his knowledge, by Detective David Carter of the Austin Police Department.

At the Murray residence, Jason Murray, Julia Henderson, the Turner twins and their mother, Alicia, are interviewed by detectives of the Austin Police Department.

7:00-8:00 Angela McGown is paged at dinner by a Child Protective Service employee who needed her key to enter the Child Advocacy Center.

7:30 p.m. Shantay Murray is interviewed and videotaped, without her knowledge or permission, by representatives of the Austin Police Department. She had been primarily responsible for Jayla Belton's care during the day, until she left for work at 2:45 p.m.

10:00-Midnight A significant number of Austin Police Officers enter the Murray residence looking for evidence at the crime scene concerning Jayla Belton's death.

26. On May 25, 1996 the following occurred:

11:30 a.m. Detective Sergeant Paul Johnson of the Austin Police Department observed the autopsy of Jayla Belton performed by Dr. Robert

Bayardo who was assisted by Linda Wormstadt. Police photographer Mark Dietz was present and took photographs. Dr. Bayardo found a number of broken ribs and a severed liver and concluded that these injuries would have caused death in a matter of minutes after the liver was severed. This procedure took 30 to 45 minutes to complete.

Midday. Detective Ernest Pedraza called Child Protective Services to report the autopsy results and advised removal of all children from the Murray residence. Detective Pedraza had concluded at this moment that LaCresha Murray was "a very good suspect" at this time.

4:30 p.m. Detective Pedraza, Detective Johnson and Child Protective Services worker Ana Becho go to the Murray residence to remove the remaining children. During this removal procedure, Detective Pedraza and Detective Johnson attempt to get statements from the children at the Murray residence. Detective Pedraza interviewed Shantay Murray and the children were interviewed by social workers of the Child Protective Services. After the removal of the children, R. L. Murray was taken to the Austin Police Department for further interview, which was not videotaped, and he was interrogated for approximately two and one-half hours. At this time Detective Pedraza considered R. L. Murray a "potential" suspect but had determined that LaCresha Murray was a "suspect" at this time.

27. On May 27, 1996 the following occurred:

A Detective Carter of the Austin Police Department again interviews R. L. Murray, who

undergoes polygraph examination but is not audio or videotaped. During this interrogation R. L. Murray remembers he heard "thumping" by LaCresha Murray in the back of the house during the afternoon. After this interview R. L. Murray is no longer a "potential" suspect. At this time Detective Pedraza knows that the Austin Police Department has no probable cause to arrest LaCresha Murray.

28. On May 28, 1996 the following occurred:

Megan Moore of the Travis County Child Protective Services department is assigned as LaCresha Murray's caseworker. No one advises Megan Moore that LaCresha Murray is now considered a "suspect" in the homicide. Detective Hector Reveles sets the plan in motion to interview LaCresha Murray by requesting that Child Protective Services caseworker Angela McGown make the arrangements for LaCresha's interview. Angela McGown calls Michael G. Morris of Child Protective Services about the interviewing of LaCresha Murray and Cleo Murray. Michael G. Morris is informed that the interviewers were to be Victim Services personnel. He was not told that LaCresha Murray was a suspect in a homicide, nor that two homicide detectives were going to interview LaCresha Murray. Angela McGown wanted Child Protective Services to transport LaCresha Murray, an act that was unusual. At this time Michael G. Morris did not know that LaCresha Murray was a suspect. Michael G. Morris had a feeling on the night of May 28, 1996 that there was

something "suspicious" about the interview scheduled for the next day, May 29, 1996.

29. On May 29, 1996 the following occurred:

Ms. Megan Moore, LaCresha Murray's caseworker, visited the Austin Police Department but is not told that LaCresha Murray is a suspect nor is she notified of the planned interview of LaCresha Murray and Cleo Murray. Detective Hector Reveles contacts Travis County Assistant District Attorney, Dayna Blazey, about whether LaCresha Murray could be interviewed without taking her before a Magistrate. Detective Pedraza had as his purpose in interviewing LaCresha Murray the obtaining of a confession from LaCresha Murray, if he could obtain such a confession. Detective Pedraza, and other members of his Austin Police Department office, had conversations with the Travis County District Attorney's Office about whether to take LaCresha Murray before a Magistrate. Detective Pedraza considered taking LaCresha Murray before a Magistrate, but if they did not have to take LaCresha Murray before a Magistrate they would not do so as that was something they were trying to avoid doing. Detective Pedraza considered the interrogation of LaCresha Murray "a non-custodial interview." Detective Pedraza recognized that taking LaCresha Murray to the Child Advocacy Center to interrogate her would have created a "custody" interrogation, which meant that LaCresha Murray would most certainly have been entitled to a lawyer to be present during the interrogation. The

Magistrate would have appointed LaCresha Murray an attorney to represent her from that moment on.

10:00 a.m. Michael G. Morris informs Sally Milant of Texas Baptist Children's Home that LaCresha Murray is the "prime suspect" in the homicide. Detective Hector Reveles asks the workers at the Texas Baptist Children's Home to bring LaCresha Murray to the Child Advocacy Center. They refuse to do so. At this moment, Detective Pedraza did not want to have LaCresha Murray transported by the Austin Police Department in order to avoid the indicia of custody. Detective Pedraza knew that such transporting would require the Austin Police Department to present LaCresha Murray before a Magistrate. Detective Pedraza conferred with Assistant District Attorney Stephanie Emmons of the Austin District Attorney's office and she explained what Detective Pedraza had to do to avoid custodial indicia. This conference took place by telephone.

Morning. Angela McGown, Supervisor, Child Protective Services, Austin, Texas, who had been assigned the LaCresha Murray case, participated in a Staff Meeting that was held prior to the interrogation of LaCresha Murray. McGown had discussions with Detective Pedraza and others about what children needed to be interrogated and where the children were located, prior to going to the Texas Baptist Children's Home. McGown was told that the Austin Police Department detectives were going to interview LaCresha Murray and that she was a "suspect" in the homicide. McGown understood

prior to going to the Texas Baptist Children's Home that "there was a possibility" that LaCresha Murray would confess to the murder or that she would talk more about what happened. Detective Pedraza disclosed to McGown that he was going to the Texas Baptist Children's Home to "get a confession" if he could do so. Detective Hector Reveles was present during this conversation. McGown knew that the interrogation of LaCresha Murray was to be conducted by the two detectives, not by Victim Services employees. McGown supervised the arrangements for the interrogation of LaCresha Murray and Cleo Murray at the Texas Baptist Children's Home and directed Melissa Greer to make the call to the Texas Baptist Children's Home to set up the interrogation. In doing so McGown knew that "LaCresha Murray was in the custody of Child Protective Services" at the Texas Baptist Children's Home. Melissa Greer attended the Staff Meeting in which LaCresha Murray was named as a "suspect." She knew that Detectives Pedraza and Johnson were going to interrogate LaCresha Murray. She was not directed to relate to anyone that LaCresha Murray was a "suspect" in the homicide.

11:00 a.m. Detective Pedraza and Detective Eells, accompanied by Angela McGown of Child Protective Services, to the Administration Building of the Texas Baptist Children's Home where they find LaCresha Murray in the reception area where she has been transported and left to wait to be interrogated by Fannie Loos, a staff member of the

Texas Baptist Children's Home. Detectives Pedraza and Eells direct LaCresha Murray to a conference room where they conduct a two hour and forty minute interrogation, that is audio taped.[2] An attempt was made during the interrogation to Mirandize LaCresha Murray; however, the warnings administered were not in compliance with federal or Texas law and violated Texas Family Code Section 51.09(b)(G) (Vernon 1996). Simultaneously, Detective Mark Gilcrest of the Austin Police Department interviews Cleo Murray by himself at the Texas Baptist Children's Home. This interrogation is conducted so as to make it appear that nothing illegal is occurring in the interrogation of LaCresha Murray. After the interrogation is completed with LaCresha Murray, Detective Pedraza and Detective Johnson, and Angela McGown return LaCresha Murray to the reception area returning her to the original chair in which they found her, leaving her alone. LaCresha Murray is not arrested after this interrogation. During the interrogation McGown is present but is not there to protect LaCresha Murray in any way.

5:30 p.m. Sheila Falco, a staff worker at the Texas Baptist Children's Home learns that LaCresha Murray is a suspect in the murder.

Late Evening. Detective Pedraza obtains an arrest warrant for LaCresha Murray and she is arrested.

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[2] Attached hereto and incorporated herein as if set out verbatim, as Exhibit 2 is the testimony of Detective Ernest Pedraza given at a Pre-Hearing Conference.

30. On August 7, 1996 LaCresha Murray receives a 20-year sentence for criminally negligent homicide and injury to a child. On October 2, 1996, Judge John Dietz grants LaCresha Murray a new trial. On February 17, 1997 LaCresha Murray is found guilty of injury to a child and is sentenced to 25 years confinement. On April 15, 1999 holding that LaCresha Murray's statement to Detectives Pedraza and Eells could have been coerced, the 3rd Court of Appeals in Austin, Texas overturns LaCresha Murray's conviction.[3]

31. On April 21, 1999 LaCresha Murray was allowed to return to her home after more than three years of incarceration since the Court of Appeals had reversed her conviction holding that the "confession" obtained by the Austin Police Department was not valid and had violated well established Texas law as relates to an eleven year old girl who cannot knowingly, intelligently, and voluntarily waive her constitutional privilege against self-incrimination in the absence of the presence and guidance of a parent or other friendly adult, or of an attorney. On August 13, 2001, all criminal charges pending against LaCresha Murray were dismissed with prejudice by Defendant Ronnie Earle acting in his capacity as the District Attorney of Travis County, Texas.

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[3] Incorporated herein as if set out verbatim as Exhibit 3 is the Opinion of the Texas Court Of Appeals, Third District, At Austin in case No. 03-97-00334-CV, filed on April 15, 1999, with instructions to Publish the Opinion.

Defendants And Their Relationships

32. Defendant Ronnie Earle is the District Attorney of Travis County, Texas. At all times relevant to this lawsuit he was responsible for the management and control of the Travis County District Attorney's Office and the supervision of the personnel thereof. In such capacity, he failed and refused to safeguard the constitutional rights and protections due LaCresha Murray as a minor under investigation for murder in Travis County, Texas. In so acting he violated her federal constitutional rights and her state constitutional rights under Article I, Sections 9, 10, and 19 of the Constitution of the State of Texas and Sections 54.03(e) and 51.09(b) of the Texas Family Code. LaCresha Murray's statements taken on May 24, 1996 and May 29, 1996 were taken without complying with the Texas Family Code. Defendant Ronnie Earle knew that the Texas Family Code was established law and that he did not have the authority to not apply that law to LaCresha Murray. Defendant Earle knew that compliance with the procedures enacted in Title 3 of the Texas Family Code were mandatory. The May 24, 1996 statement was taken without LaCresha Murray waiving her rights pursuant to Section 51.09 of the Texas Family Code and she was not independently examined by a Magistrate prior to the making of her statement on May 29, 1996 in violation of Texas Family Code Section 51.09(b)(G) (Vernon 1996). Defendant Earle was aware of the case styled *E.A.W. v. State*, 547 S.W.2d 63 (Tex.

Civ. App. – Waco 1977)(holding that an eleven year old child of such immaturity and tender age cannot knowingly, intelligently, and voluntarily waive her constitutional privilege against self-incrimination in the absence of the presence and guidance of a parent or other friendly adult, or of an attorney.) Defendant Earle knew that LaCresha Murray was below average intelligence, that she was in a special education program at school, and that she had been separated from her parents for four days.

33. Defendants Dayna Blazey and Stephanie Emmons were Assistant District Attorneys of Travis County, Texas at this time. In their capacities as legal advisors to the agencies and individuals involved, they conspired with Defendant Earle and Defendants Pedraza, Johnson, McGown, Greer, Moore, Knee, Reveles, and Eells to circumvent LaCresha Murray's Constitutional protections as a minor under suspicion of murder in Travis County, Texas. They violated all of LaCresha Murray's rights that are set forth under paragraph 32, which are incorporated herein.

34. Defendant Angela McGown was Supervisor of the Travis County Child Protective Services, a division of the Texas Department Of Protective And Regulatory Services, at all times relevant to the treatment LaCresha Murray underwent. She conspired with Austin Police Department Personnel to violate LaCresha Murray's Constitutional rights as a minor under suspicion of murder in Travis County, Texas.

35. Defendant Melissa Greer was an employee of Travis County Child Protective Services, a division of the Texas Department Of Protective And Regulatory Services, at all times relevant to the treatment LaCresha Murray underwent. She conspired with Defendant McGown, Austin Police Department detectives, and employees of the Texas Baptist Children's Home to violate LaCresha Murray's Constitutional rights as a minor under suspicion of murder in Travis County, Texas.

36. Defendant Megan Moore was LaCresha Murray's Case Worker for Travis County Child Protective Services, a division of the Texas Department Of Protective And Regulatory Services, at all times relevant to this Complaint. She failed to protect LaCresha Murray from the conspiratorial actions of the other defendants and her civil and constitutional rights appropriate thereto.

37. Defendant Hector Reveles, Defendant Ernest Pedraza, Defendant Paul Johnson, and Defendant Albert Eells, at all times relative to this Complaint were detectives employed by the Austin Police Department. They conspired to deprive LaCresha Murray of her civil and constitutional rights as an accused person including depriving her of right of counsel during questioning, failing to inform her of her rights against self incrimination, and her protections as a minor child. They violated all of the laws set forth under paragraph 32, which are incorporated herein.

38. Ms. Sally Milant was an employee of Texas Baptist Children's Home at all times relevant to this

Complaint. She conspired with other defendants in arranging to have LaCresha Murray alone to be questioned without counsel or a protective adult present during questioning by Austin Police Detectives.

39. Ms. Fanny Loos was an employee of Texas Baptist Children's Home at all times relevant to this Complaint. She escorted LaCresha Murray to the place where she was found alone by Austin Police Detectives who she knew were to interview her.

40. Defendant Thomas Chapman is the Executive Director of the Texas Department Of Protective And Regulatory Services and as such supervised the Defendant employees in this matter.

41. Defendant Stanley Knee is the Chief of Police of the City Of Austin Police Department and as such supervised all of the Austin Police Department Defendants in this matter.

EVENTS AND ACTIONS CONSTITUTING THE CONSPIRATORIAL ACTIONS OF THE DEFENDANTS AND VIOLATIONS OF LACRESHA MURRAY'S CIVIL AND CONSTITUTIONAL RIGHTS

A. Events

42. On May 24, 1996, Derrick Shaw delivered Jayla Belton to the Murray residence at approximately 8:00 a.m. At approximately 1:00 p.m., Julia Henderson, a visitor to the home observed Jayla Belton was sweating noticeably.

During the afternoon, Shantay Murray, a teenaged family member, left the residence to go to work as did her younger brother, Jason Murray, who left the residence to play baseball. At approximately 5:00 p.m., Alicia Turner picks up her twin boys under care at the Murray residence and observed that Jayla Belton was sweating profusely.

43. At approximately 5:30 p.m., R. L. Murray realizes that Jayla Belton is seriously ill and has LaCresha Murray take her into the Brackenridge Hospital Emergency Room. Jayla Belton is pronounced dead at the hospital and police are called to investigate the circumstances. At approximately 6:00 p.m., LaCresha Murray is taken to the Child Advocacy Center of Child Protective Services and is interviewed and videotaped by Tello Leal, a counselor with the Victim Services Unit of the Austin Police Department. After the interview LaCresha Murray is returned by police to the Murray residence.

44. Meanwhile, R.L. Murray was taken to the Austin Police Department where he is interviewed and videotaped without his knowledge by Detective David Carter.

45. At the Murray residence, Jason Murray, Julia Henderson, the Turner twins and their mother, Alicia, are interviewed by police.

46. Between 7:00 and 8:00 p.m. Defendant Angela McGown is paged at dinner by a Travis County Child Protective Services' counselor who needed McGown's key to enter the Child Advocacy Center.

47. At approximately 7:30 p.m. Shantay Murray, who had been primarily responsible for Jayla Belton's care that day, was interviewed and videotaped at the Austin Police Department.

48. Thereafter, a significant number of police officers enter the Murray residence looking for evidence concerning Jayla Belton's death. At approximately 11:55 p.m. Cleo Murray was interviewed at the residence.

49. On May 25, 1996 at approximately 11:30 a.m., Defendant Detective Sergeant Paul Johnson of the Austin Police Department observed the autopsy of Jayla Belton by Dr. Robert Bayardo. Police photographer Mark Dietz was also present. Dr. Bayardo found a number of broken ribs and a severed liver that he concluded would have caused death in

a matter of minutes after the liver was severed. This procedure took 30 to 45 minutes to perform.

50. About midday, Defendant Pedraza called Child Protective Services to report the autopsy results and advised removal of all children from the Murray residence. Defendant Pedraza concluded that LaCresha Murray was "a very good suspect" at this time.

51. At approximately 4:30 p.m., Defendants Pedraza and Johnson and Child Protective Services worker Ana Becho went to the Murray residence to remove the children. During this procedure, Defendants Pedraza and Johnson attempted to get statements from the residents of the Murray residence. Defendant Pedraza knew that the

children had to be interviewed by social workers and that he was only able to interview Shantay Murray.

52. After the children were removed, R. L. Murray was taken to the Austin Police Department for a further interview, which was not videotaped, of approximately two and one-half hours. At this time Defendant Pedraza considered R. L. Murray a "potential" suspect and had concluded that LaCresha Murray was a "suspect" at this time.

53. On May 27, 1996, Detective Carter again interviewed R. L. Murray, who took a polygraph examination, but is not audio or videotaped. At this time, R. L. Murray remembered that he heard "thumping" by LaCresha Murray in the back of the house during the afternoon. After this interview he is no longer a suspect. Defendant Pedraza at this time knew that the Austin Police still had no probable cause to arrest LaCresha Murray

54. On May 28, 1996, Defendant Megan Moore was assigned as LaCresha Murray's case as a Child Protective Services caseworker. No one informed Defendant Moore that LaCresha Murray was a suspect in the homicide.

55. Meanwhile, Defendant Reveles set a plan in motion to interview LaCresha Murray without benefit of counsel by requesting that Defendant McGown make the arrangements for the children's interviews.

56. In furtherance of the plan, Defendant McGown of Victim Services called Michael G. Morris of Child Protective Services about interviewing the Murray children. She told him that

the interviewers were to be Victim Services personnel. He was not told that LaCresha Murray was a suspect, nor that two homicide detectives were going to interview LaCresha Murray. Defendant McGown requested that Child Protective Services transport LaCresha Murray, which Mr. Morris later testified under oath "was unusual." On May 28, Mr. Morris did not know and was not told that LaCresha Murray was a suspect in the homicide.

57. Despite the efforts of the conspirators, Mr. Morris later testified under oath that he had a feeling on the night of May 28, 1996 that there was something "suspicious" about the interview scheduled for May 29, 1996.

58. On May 29, 1996, Defendant Moore, LaCresha Murray's caseworker, visited the Austin Police Department but was not told that LaCresha Murray was a suspect in the homicide or notified of the interview.

59. That morning, Defendant Reveles contacted Travis County Assistant District Attorney, Defendant Blazey, to discuss ways LaCresha Murray could be interviewed without taking her before a Magistrate. At this time if was Defendant Pedraza's purpose on May 29, 1996 to obtain a confession from LaCresha Murray, if he could.

60. Defendant Pedraza and members of his office had conversations with the District Attorney's Office about whether to take LaCresha Murray and present her to a Magistrate. Defendant Pedraza considered that taking her to a Magistrate Judge was "a consideration." Defendant Pedraza's position

was that if they did not have to take LaCresha Murray in front of a Magistrate Judge they would not do so and that they were trying to "avoid" such a situation. Defendant Pedraza considered the interview of LaCresha Murray "a non-custodial interview." Defendant Pedraza knew that taking LaCresha Murray to the Child Advocacy Center might have created a custody situation. Therefore, the decision was made to conduct the interview at the Texas Baptist Children's Home.

61. At approximately 10:00 a.m., Michael G. Morris informed Sally Milant that LaCresha Murray was the prime suspect in the murder of Jayla Belton.

62. That same morning, Defendant Moore visited the Austin Police Department and was not told that LaCresha Murray was a suspect in the homicide.

63. At about the same time, Defendant Reveles asked the Texas Baptist Children's Home to bring LaCresha Murray to the Child Advocacy Center for an interview by police. They refused.

64. Defendant Pedraza did not want to transport LaCresha Murray so as to avoid the indicia of custody. Such indicia would require taking her in front of a Magistrate Judge that he and the other co-conspirators did not want to do.

65. Defendant Pedraza inquired as to how he could avoid taking LaCresha Murray before a Magistrate Judge and Defendant Emmons of the Austin District Attorney's Office explained what to do to avoid "custodial indicia."

66. At the time arranged by the conspirators, Defendants Pedraza and Eells, accompanied by

Defendant McGown arrived at the Administration Building of Texas Baptist Children's Home where they found LaCresha Murray sitting alone in the reception area where she has been transported and left to wait by Fannie Loos of the Texas Baptist Children's Home.

67. Defendants Pedraza, Eells and McGown then escorted LaCresha Murray to a nearby conference room where they conducted a two hour and forty minute interview using two tape recorders to record the session and the words of LaCresha Murray.

68. Simultaneously, Detective Mark Gilcrest of the Austin Police Department interviewed Cleo Murray by himself at the Texas Baptist Children's Home. He did not use a tape recorder.

69. After the interview, Defendants Pedraza, Eells and McGown returned LaCresha to the reception area returning her to the original chair in which they found her, leaving her alone. She was not arrested after the interview.

70. At approximately 5:30 p.m., Sheila Falco learned that LaCresha Murray was a suspect in the homicide. Thereafter, word spread quickly among the professionals charged with LaCresha Murray's protection.

B. Omissions

71. The agents, servants and employees of the Texas Department Of Protective And Regulatory Services, through its division, Child Protective Services of Travis County, failed and refused to

protect and safeguard minor LaCresha Murray's civil and constitutional rights by its failures to appropriately monitor the actions of the employees, agents and servants of the Travis County District Attorney's Office, the City Of Austin Police Department, and the Texas Baptist Children's Home.

72. The agents, servants and employees of the Texas Baptist Children's Home failed and refused to protect and safeguard minor LaCresha Murray's civil and constitutional rights by its failures to appropriately monitor the actions of employees, agents and servants of the Travis County District Attorney's Office, the City Of Austin Police Department, and the Travis County Child Protective Services.

73. Employees, agents and servants of the Travis County District Attorney's Office, as officers of the Court and licensed attorneys sworn to uphold the laws of the State of Texas and the Constitution of the United States failed to protect and safeguard LaCresha Murray's civil and Constitutional rights instead conspiring to violate them.

74. Employees, agents and servants of the City Of Austin Police Department failed and refused to protect the rights of LaCresha Murray by failing to advise her and the adults protecting her that she was a suspect in the murder of Jayla Belton, not properly advising her of her Miranda rights, and protection afforded her by the Texas Family Code, and not advising her of her right to an attorney, and

improperly charging her before a Magistrate as required by federal and Texas law.

75. Detectives of the Austin Police Department and their supervisors improperly evaluated the evidence before them during their investigation. They ignored the various reports indicating that Jayla Belton appeared to be sick for several hours prior to being brought to Brackenridge Hospital and focused on the coroner's report that Jayla Belton would have died within minutes of her liver damage. Further, they failed and refused to question the coroner's conclusions or to probe possible alternative circumstances in which Jayla Belton's injuries could have occurred prior to arriving at the Murray residence or upon her arrival at the hospital.

Overt Acts Violating the Civil and Constitutional Rights Of All Of The Plaintiffs

76. Defendant Pedraza reported the autopsy results to the Travis County Child Protective Services and advised removal of all children from the Murray residence. Such act resulted in LaCresha Murray's removal from her home illegally. Such act resulted in the Murray children being removed from their residence illegally.

77. Defendants Pedraza and Johnson went to the Murray residence with Child Protective Services worker Ana Becho in an attempt to get statements from child residents of the Murray residence when they knew or should have known such statements were to be taken by social workers.

78. Agents, servants and employees of the City of Austin Police Department used statements by R. L. Murray regarding "thumping" by LaCresha Murray in the back of the house during the afternoon to focus attention on LaCresha Murray when they knew or should have known that the statements were of no evidentiary value.

79. The agents, servants and employees of the City of Austin Police Department, the Travis County District Attorney's Office and the Travis County Child Protective Services failed and refused to inform Defendant Moore, as LaCresha Murray's assigned Child Protective Services case worker that LaCresha Murray was a "suspect" in the homicide so that Defendant Moore could take action to protect LaCresha Murray and the other Plaintiffs.

80. All of the defendants cooperated in the plan set in motion by Defendant Reveles to interview LaCresha Murray without benefit of counsel, or the presence of her parents, or an adult who could advise her properly.

81. In furtherance of the illegal plan to interrogate LaCresha Murray, Defendant McGown of Victim Services told Michael G. Morris of Child Protective Services that the interviewers were to be conducted by Victim Services personnel when she knew or should have known they were to be Defendants Pedraza and Johnson of the City Of Austin Police Department. Further, Defendant McGown requested that Child Protective Services transport LaCresha Murray in furtherance of the plan to keep the planned interrogation from appearing to be

"custodial." Further, Defendant McGown failed and refused to notify Michael G. Morris that LaCresha Murray was a suspect in the murder of Jayla Belton.

82. Defendant Reveles contacted Assistant District Attorney, Defendant Blazey, to discuss ways LaCresha Murray could be interviewed without taking her before a Magistrate thereby violating her civil and constitutional rights. The conspirators had various conversations about whether to take her in front of a Magistrate. Further the conspirators set the interrogation at the Texas Baptist Children's Home rather than the Child Advocacy Center to avoid the "indicia" of custodial interrogation.

83. Although Defendant Moore informed Sally Milant that LaCresha Murray was the prime suspect in the murder of Jayla Belton she failed to act to protect her from the illegal interrogation planned for later in the day.

84. The City Of Austin Police Department failed and refused to inform Defendant Moore that LaCresha Murray was a suspect in the homicide and was to be interrogated later in the day without a parent or attorney or other protective representative present.

85. Defendant Reveles asked the Texas Baptist Children's Home to bring LaCresha Murray to the Child Advocacy Center for an interview by police in an attempt to circumvent the appearance of custodial interrogation. Such action was an attempt to perpetrate a sham and a fraud in violation of LaCresha Murray's civil and Constitutional Rights.

86. Defendant Emmons of the County of Travis District Attorney's Office explained what the City of Austin Police Department needed to do to avoid the appearance of custodial indicia.

87. In furtherance of the conspiracy, Fannie Loos and another person on the Home Staff of Texas Baptist Children's Home, left LaCresha Murray sitting alone in the reception area where she was told to wait for the persons who wanted to talk to her.

88. Defendants Pedraza, Eells and McGown escorted LaCresha Murray to a nearby conference room where they conducted a two hour and forty minute interrogation, using two tape recorders without advising LaCresha Murray of her rights to a lawyer or against self-incrimination. They attempted to provide Miranda rights, but they did not comply with Miranda or Texas law. Even if they had made such warnings properly, they knew that an eleven year old child could not sign a confession because of a child's ability to understand and waive such rights.

Fourth Amendment Violations

89. Paragraphs 1 through 88 are hereby alleged and incorporated herein by reference.

90. All of the Defendants violated all of the Plaintiff's rights under the Fourth Amendment of the United States Constitution that protects them from unreasonable searches and seizures in their persons, houses, papers and effects.

Fifth Amendment Violations

Self Incrimination

91. Paragraphs 1 through 88 are hereby alleged and incorporated herein by reference.
92. From the report of the death of Jayla Belton until the arrest of LaCresha Murray, the Defendants conspired to and did deprive LaCresha Murray of her Constitutional Fifth Amendment right against self-incrimination resulting in a period of removal from her family and incarceration for a period of over three years.

Sixth Amendment Violations

93. Paragraphs 1 through 88 are hereby alleged and incorporated herein by reference.
94. From the time of the reporting of the death of Jayla Belton until the arrest of LaCresha Murray, the Defendants conspired to and did deprive LaCresha Murray of her Constitutional right of counsel resulting in a period of removal from her family and incarceration for a period of over three years.
93. By doing so, Defendants have violated LaCresha Murray's rights under the Sixth Amendment of the United States Constitution.

Eight Amendment Violations

94. Paragraphs 1 through 88 are hereby alleged and incorporated herein by reference.

95. From the time of the reporting of the death of Jayla Belton until the arrest of LaCresha Murray, the Defendants conspired to and did deprive LaCresha Murray of her Constitutional right to be free from cruel and unusual treatment and of being denied living with her family and the resulting period of removal from her family and incarceration for a period of over three years. Likewise, the Murray Children Plaintiffs that were removed from their residence and their parents suffered cruel and unusual treatment in violation of the Eight Amendment, as did R. L. Murray and Shirley Murray by not having their children live with them. Also, Shantay Murray suffered cruel and unusual treatment as a result of not having her siblings live with her in her parent's home.

Thirteenth Amendment Violations

96. Paragraphs 1 through 88 are hereby alleged and incorporated herein by reference.

97. All of the Plaintiff's are Black citizens of Austin, State of Texas. Plaintiffs allege that the Defendants would not have subjected them to the treatment they received if they were White citizens of the City of Austin, State of Texas. The treatment they received is an incident of slavery that was abolished by the Thirteenth Amendment.

Fourteenth Amendment Violations

98. Paragraphs 1 through 88 are hereby alleged and incorporated herein by reference.

99. The acts of the Defendants, individually and as conspirators, deprived LaCresha Murray particularly, and the other Plaintiffs generally, of life, liberty, and property without due process of law and denied them of the equal protection of the laws.

42 U.S.C. § 1983 Violations

100. Paragraphs 1 through 88 are hereby alleged and incorporated herein by reference.

101. All of the Defendants acting under color of state law acted in a manner that violated 42 U.S.C. Sec. 1983 and caused all of the Plaintiff's damages. Additionally, Defendant Knee and the City Of Austin Police Department failed to adequately train its agents, servants and employees in the handling of this case and they are liable under Sec. 1983. Also, Defendant Chapman and the Texas Department Of Protective And Regulatory Services failed to adequately train its agents, servants and employees in the handling of this case and they are liable under Sec. 1983.

State of Texas Law Violations

102. Paragraphs 1 through 88 are hereby alleged and incorporated herein by reference.

Juvenile And Texas Family Code Violations

103. On May 24, 1996 shortly before 12:00 a.m. LaCresha Murray was returned to the custody of R. L. Murray. However, the City of Austin Police Department had obtained a video statement of LaCresha Murray. At no time during the video statement was LaCresha Murray given her Miranda warnings now was she warned independently by a Magistrate as required by the Texas Family Code, Section 51.09. Family Code section 52.02(a) requires that once an officer takes a juvenile into custody, the officer must do one of six enumerated acts without unnecessary delay and without first taking the juvenile to any place other than a juvenile processing office. This was not done with LaCresha Murray and the actions of the City of Austin Police officers violated Family Code Section 52.02(a).

104. On May 26, 1996 the City Of Austin Police Department contacted the Texas Department Of Protective And Regulatory Services to have LaCresha Murray and her brothers and sister removed from their parents home. LaCresha Murray was removed out of the City of Austin and placed in the Texas Baptist Children's Home in Round Rock, Texas. The other Murray minor Plaintiff's were removed from their parent's home and placed with various adults in the Austin area. All of the Murray Plaintiff's are entitled to recover mental anguish damages as bystanders because of the actions of the City Of Austin Police and Texas Department Of Regulatory And Protective actions. These Plaintiff's were located at the scene of the

arrest, suffered shock as a result of a direct emotional impact upon LaCresha Murray from a sensory and contemporaneous observance of the arrest, and they are closely related to their daughter and sister. LaCresha Murray was given Miranda warnings prior to being questioned on May 29, 1996, but the warnings administered to her were not in compliance with the Texas Family Code, Section 51.09. The questioning of the Murray minor children and of LaCresha Murray violated Article I, Sections 9, 10, and 19 of the Constitution of the State of Texas and Sections 54.03(e) and 51.09 © of the Texas Family Code.

105. Section 51.09(b)(1) of the Texas Family Code requires that for a written statement made by a juvenile to be admissible the juvenile must be taken before a magistrate prior to giving the statement and be warned by the magistrate of his or her right to remain silent, right to have an attorney present during the interrogation, right to have an attorney appointed, right to terminate the interview, and the possible consequences of certification and/or determinate sentence, if applicable. On May 29, 1996, after more than two hours of interrogation by Defendants Pedraza and Johnson, a written statement was taken from LaCresha Murray. She was never taken at any time before a magistrate – neither before, during, or after the interrogation. There is no documentation attached to the written statement LaCresha Murray signed showing that a Magistrate Judge "examined the child independent of any law enforcement officer or prosecuting

attorney" as required by Section 51.09(b)(1) of the Texas Family Code. A Magistrate Judge did not make an independent determination that LaCresha Murray understood the nature and contents of the statement and that she was knowingly, intelligently, and voluntarily waiving all of the rights set forth in Section 51.09. Likewise, all of the interrogations of the Murray children Plaintiffs' and the video taping thereof, including Shantay Murray, were taken in a similar fashion in violation of the Texas Family Code, Section 51.09.

106. LaCresha Murray was incapable of freely and voluntarily waiving her rights under the circumstances of the interrogation. The case of E.A.W. v. State, 547 S.W.2d 63 (Tex. Civ. App.-Waco 1977) was clearly established law that all of the Defendants knew protected LaCresha Murray. LaCresha Murray was an 11-year-old child at the time of the May 29, 1996 statement interrogation. Defendants Pedraza and Johnson questioned her without the presence of her parents, a friendly adult or an attorney. The interrogation violated established Texas law as set forth in *E.A.W. v. State*, where the court held that "In our opinion, a child of such immaturity and tender age cannot knowingly, intelligently, and voluntarily waive her constitutional privilege against self-incrimination in the absence of the presence and guidance of a parent or other friendly adult, or of an attorney." 547 S.W.2d at 64.

Malicious Prosecution

106. Defendants Earle, Blazey, and Emmons continued the prosecution of LaCresha Murray even though they knew that they did not have a case they could prosecute without the wrongfully obtained statement from her. The evidence they had against LaCresha Murray was "only marginally sufficient" once the illegally obtained statement is eliminated from the evidence. These Defendants knew that they were maliciously prosecuting LaCresha Murray and did so for reasons other than the enforcement of the law.

Assault And Battery, False Arrest, And False Imprisonment Violations

107. Paragraphs 1 through 88 are hereby alleged and incorporated herein by reference.

108. LaCresha Murray was assaulted and battered at the moment she was handcuffed and placed into the custody of the City Of Austin Police authorities. She was falsely arrested because the Defendants knew that they had no case against her and arrested her anyway. She was falsely imprisoned because the Defendants knew that the statement that they had obtained was illegally obtained. The Defendants were well aware of their conspiracy and their acts to deprive LaCresha Murray of her rights as they plotted and conspired to get the statement from her in violation of established Texas and federal law.

Libel, Slander And Defamation Of Character Violations

109. Paragraphs 1 through 88 are hereby alleged and incorporated herein by reference.

110. All of the Plaintiff's were libeled, slandered and suffered defamation of their character due to the actions of all of the Defendants. LaCresha Murray has suffered the most defamation of character because she was falsely accused and convicted of a crime she did not commit, but by their association with their sister and daughter the Murray Plaintiff's suffered libel, slander and defamation of character. All of the Plaintiff's were in the "zone" of the action and were wrongfully tainted and suffered damages.

Lost Enjoyment Of Life Violations

111. Paragraphs 1 through 88 are hereby alleged and incorporated herein by reference.

112. LaCresha Murray's ability to participate in and derive pleasure from the normal activities of daily life and for her inability to pursue talents, recreational interests, hobbies, school or avocations were denied her while she was incarcerated illegally. She was basically deprived of more than five years of a regular growing up life as a child. Likewise, all of the Murray Plaintiff's were deprived of the lost enjoyment of life because of the illegal acts of all of the Defendants.

Damages

113. Plaintiff's allege that the acts of these Defendants, individually or in their official capacities, and as co-conspirators, amounted to intentional infliction of emotional distress on all of the Plaintiffs. In this matter all of the Defendants acted intentionally or recklessly; their conduct was extreme and outrageous; the actions of the Defendants caused all of the Plaintiffs emotional distress; and the resulting emotional distress was severe.

114. Plaintiffs are now suffering and have suffered in the past and will continue to suffer irreparable harm and injury from the Defendant's policies, practices and actions, and will suffer harm and injury from the Defendant's actions in the future as set forth herein.

115. As a proximate result of Defendant's wrongful acts Plaintiff's have suffered emotional distress, humiliation, embarrassment and mental anguish in the past and will continue to so suffer in the future in an amount to be proven at trial, but in excess of $30,000,000.00.

116. Plaintiff would show that the Defendant's conduct was done with such a conscious indifference as to the rights, welfare and safety of the Plaintiffs that such conduct rises to a level that is not to be tolerated in our society and Plaintiffs are entitled to compensatory damages and exemplary damages.

117. Plaintiffs would show that the conduct of the Defendants was done with such a conscious indifference to the welfare and safety of the Plaintiff's to rise to the level of gross neglect and malice and that such malice was a producing cause of Plaintiff's damages. Plaintiffs would show that pursuant to Sec. 41.001(7)(B) Tex. Civ. Prac. & Rem. Code that the acts and omissions complained of herein:

a. Which when reviewed objectively from the standpoint of the actor at the time of the occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiffs; and

b. Of which the Defendants had actual, subjective awareness of the risk involved, but nevertheless, proceeded with conscious indifference to the rights, safety and welfare of the Plaintiffs.

Plaintiffs would show that they are entitled to punitive and exemplary damages pursuant to this statute and under the provisions of 42 U.S.C. 1983.

117. Plaintiff would show that pursuant to Sec. 41.008(C)(5) Tex. Civ. Prac. & Rem. Code that an exception to the limitations on the amount of recovery contained in Sec. 41.008(a) and (b) Tex. Civ. Prac. & Rem. Code exists. In support thereof Plaintiffs would show that Defendant's were in violation of the Texas Family Code and well established law, the appropriate provisions which are incorporated herein as if fully set forth. In support thereof Plaintiffs would show that the Defendants violated the Texas Family Code and

well established law and subjected the Plaintiffs to serious damages.

WHEREFORE, PREMISES CONSIDERED, Plaintiff's respectfully pray to this Court to advance this case on the docket; order a speedy hearing at the earliest practicable date; and cause this case to be in every way expedited and upon such hearing to:

1. Grant Plaintiffs judgment against said Defendants, individually, jointly and severally, and in their official capacities, for the full amount of Plaintiff's damages, which exceed $30,000,000.00; and

2. Grant Plaintiffs pre-judgment and post-judgment interest as provided by law; and

3. Grant Plaintiffs their attorney fees, costs of court and necessary expenses incurred in the presenting of this case; and

4. Grant such additional relief as the Court deems just and proper; and

5. Award Plaintiff's compensatory damages and exemplary damages; and

6. Grant Plaintiff's a jury trial upon those issues triable by jury; and

7. Grant Plaintiff's such other and further relief, at law or in equity, to which they may show themselves justly entitled.

Respectfully submitted,

Frank P. Hernandez
716 Wayne

Dallas, Texas 75223-1645
214-821-1213
Fax 214-821-1214
E-mail: fgeagle@aol.com
TBC#09516000

Attorney For Plaintiffs

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

LACRESHA MURRAY; R.L. MURRAY and SHIRLEY MURRAY, Individually and as Next Friends of Cleo Murray, Jason Murray, Tyler Murray, and Trent Murray; and SHANTAY MURRAY, Individually,

Plaintiffs,

-vs- **Case No.A-02-CA-552-SS**

RONNIE EARLE, Individually and as District Attorney of Travis County, Texas; et al.,

Defendants.

ORDER

BE IT REMEMBERED on the 30th day of July 2003 the Court reviewed the file in the above-styled cause, and specifically the State Defendants Morris and Chapmond's Motion to Dismiss [#44], Defendant Melissa Atwood Greer's Motion to

Dismiss and Rule 56 Motion for Summary Judgment [#57], Defendants Ronnie Earle, Dayna Blazey and Stephanie Emmons's Second Motion to Dismiss Pursuant to Rule 12(c), or, in the Alternative, Motion for Summary Judgment [#58], and the City Defendants' 12(c) and 12(e) Motion and Motion for Summary Judgment [#59]. Having considered the motions, the Plaintiffs' responses thereto, the replies and supplements filed by the Defendants and Plaintiffs, the relevant law, and the case file as a whole, the Court now enters the following opinion and orders.

Background

LaCresha Murray, Shantay Murray, and R.L. and Shirley Murray, who are suing individually and as next of friend of their minor children Cleo, Jason,

Tyler, and Trent (collectively along with Shantay, "the Murray children"), filed this lawsuit against the police detectives, prosecutors, counselors and social workers involved in the interrogation and prosecution of LaCresha for the murder of Jayla Belton. The plaintiffs sued the following individuals alleging they suffered more than $30 million in damages as a result of their violations of state and federal law: Travis County District Attorney Ronnie Earle in his official and individual capacities and Assistant District Attorneys Danya Blazey and Stephanie Emmons in their individual capacities (collectively, the "prosecutor defendants"); Executive Director of the Department of Protective and Regulatory Services ("DPRS") Thomas Chapmond in his official capacity and

DPRS caseworker Megan Morris in her individual capacity (collectively, the "State defendants"); and Austin Police Department ("APD") Chief Stanley Knee in his official capacity, along with APD Detectives Hector Reveles, Paul Johnson, Ernest Pedraza, and Albert Eells, and APD Victim Services Counselors Angela McGown and Melissa Greer Atwood in their individual capacities (collectively, except for Knee, the "APD defendants").

This case arises out of the investigation of the death of Jayla Belton, a two-year girl routinely cared for by Shirley and R.L. Murray, the Murray children's grandparents and adoptive parents. See *in re L.M.*, 993 S.W.2d 276 (Tex. App.-Austin 1999, pet. ref'd)(reversing the lower court's finding that LaCresha Murray engaged in delinquent conduct by

committing the offense of injury to a child on the grounds her confession was obtained illegally). After wading through plaintiffs voluminous, repetitive, and inexcusably confusing pleadings, [1] the Court understands the plaintiffs to allege the following sequence of events:

At 8:00 a.m. on May 24, 1996, Jayla was dropped off at the Murray home. *See* R. 7 Stmt. at 8. When another parent came to pick up her children at 5:00 p.m., she noticed Jayla sweating profusely. *Id.* At 5:30 p.m., R.L. drove LaCresha and Jayla to the hospital, where Jayla was pronounced dead. *Id.* At 6:00 p.m., a counselor with the Victim Services Unit ("VSU") of APD took

[1] On three occasions over a period of months the Court unsuccessfully instructed plaintiffs' counsel to replead and allege specific causes of action against each defendant rather than the rambling narrative and conclusory pleadings found in this record.

LaCresha, who was eleven years old, to the Child Advocacy Center at Travis County Child Protective Services. *Id.* at 8-9. The questioning was videotaped without her permission or knowledge. *Id.* at 9. After being questioned, she was returned home. *Id.*

The plaintiffs contend several others were interviewed in connection with Jayla's injuries. R.L. was questioned by APD Detective Carter at the police department, and his interview was videotaped without his knowledge. *Id.* At the Murray residence, APD detectives interviewed other individuals including the woman who had noticed Jayla's profuse sweating. *Id.* At 7:30 p.m., APD detectives interviewed Shantay, LaCresha's sister who had cared for Jayla until she left for work at

2:45, and videotaped the interview without her permission. *Id.* at 9-10. From 10:00 p.m. to midnight, APD officers conducted a search of the Murray home. *Id.* at 10.

The following day, Travis County Medical Examiner Robert Bayardo conducted an autopsy on Jayla's body in Detective Johnson's presence. Id. The medical examiner discovered several broken ribs and a severed liver and concluded Jayla would have died within minutes of sustaining a severed liver. Id. at 10-11. Around noon, defendant Pedraza called Child Protective Services to report the autopsy results and inform that the Murray children should be removed from their home. Id. at 11. The plaintiffs maintain at this point, defendant Pedraza had concluded LaCresha "was a very good suspect."

Id. Later that afternoon, defendants Pedraza and Johnson and a Child Protective Services worker went to the Murray residence and removed the remaining children. Id. They did so without a court order pursuant to Section 262.102 of the Texas Family Code, which permits removal of a child without a court order in emergency situations. Id. The plaintiffs allege that while the detectives were removing the children, they solicited statements from them. Id. Later, defendant Pedraza interviewed Shantay. Id. Social workers interviewed the other children. Id. at 11-12.

After the children were removed from the Murray home, R.L. was taken to the police department and APD officers again interviewed him. Id. at 12. According to the plaintiffs, the

questioning lasted two and one-half hours. Id. The plaintiffs maintain at this point, defendant Pedraza considered R.L. a "potential suspect" and LaCresha a "suspect." Id.

The following day, May 27, 1996, an APD detective conducted yet another interview of R.L. as well as a polygraph examination. Id. Neither was videotaped nor audiotaped. Id. During this interview, R.L. stated he remembered hearing "thumping" by LaCresha in the back of the house the day Jayla died. Id. The plaintiffs contend at this point the police no longer considered R.L. a suspect.

On May 28, 1996, the 126th Judicial District Court of Travis County, Texas conducted an ex-parte show cause hearing regarding the Murray children's removal. Id. at 13. According to the

plaintiffs, the order signed by the state district judge included a section designated for the appointment of a guardian ad litem that was inexplicably left blank. Id. The plaintiffs claim Child Protective Services assigned defendant Megan Morris to be LaCresha's caseworker without telling the social worker LaCresha was a suspect in Jayla's murder. Id. at 13-14.

The plaintiffs maintain defendant Reveles devised a plan to create the appearance LaCresha was going to be interviewed again about Jayla's death when in reality he intended to conduct a custodial interrogation. Id. at 14. Apparently, the plaintiffs believe defendant Reveles did this to avoid having to provide LaCresha with an attorney or any other adult to represent her interests. In furtherance

of his plan, defendant Reveles allegedly requested defendant Angela McGown[2] arrange the interview. Id. Defendant McGown allegedly called Michael Morris[3] of Child Protective Services and informed him that LaCresha was going to be interviewed by VSU personnel, but did not tell him LaCresha was a suspect in Jayla's death and was going to be interrogated by two homicide detectives. Id. According to plaintiffs, Michael Morris did not know LaCresha was a suspect at this point, but he

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[2] The plaintiffs in their pleadings describe Angela McGown as a DPRS worker. From the APD defendants' motions, it is clear that McGown is employed by APD as a Victim Services Counselor, not DPRS. The plaintiffs have acknowledged that she is an employee of APD. *See* Supp. R. 7 Stmt. at 49.

[3] Michael Morris is apparently a different employee of Child Protective Services (DPRS) than Megan Morris. Michael Morris is not a defendant in this lawsuit. In their first motion to dismiss, the State defendants questioned whether the plaintiffs were in fact referring to Megan Morris when they described the actions of "Michael Morris." In light of the plaintiffs' most recent pleadings, however, the Court believes that Michael and Megan are two different individuals with the same last name.

became suspicious about the scheduled interview later that evening.

The plaintiffs allege several things happened during the morning of LaCresha's interview (May 29, 1996), but the sequence of events is not clear from plaintiff's allegations. The plaintiffs contend defendant (Megan) Morris went to the police department but was not informed about LaCresha's or her sister Cleo's scheduled interviews. Id. at 15. Defendants Reveles and Pedraza and "other members of APD" allegedly contacted defendant ADA Blazey and asked whether they could interview LaCresha without taking her before a Magistrate. Id. The plaintiffs contend defendant Pedraza intended to obtain a confession from LaCresha. Id. The plaintiffs also contend he

considered taking her before a magistrate but wanted to avoid doing so because he knew a magistrate would appoint an advocate, and that he avoided interviewing her at the Child Advocacy Center because he did not want the interview to be considered a custodial interrogation. Id. at 15-16. They allege defendant Pedraza spoke to defendant ADA Stephanie Emmons who instructed him on what steps he could take to avoid "custodial indicia." Id. at 17.

The plaintiffs allege Michael Morris of DPRS told those at the Texas Baptist Children's Home, the facility where LaCresha was staying, that LaCresha was the "prime suspect" in Jayla's homicide. Id. at 16. The plaintiffs contend that as a result, when defendant Reveles called the children's shelter and

requested they bring LaCresha to the Child Advocacy Center, they refused to do so. Id. The plaintiffs maintain at this point, defendant Pedraza did not want LaCresha to be transported to the police department by APD officers because he wanted to avoid the "indicia of custody" and having to present LaCresha to a magistrate. Id. at 16-17.

On that same morning and before the interview, the plaintiffs allege defendant McGown participated in a staff meeting in which she was informed LaCresha was a suspect in the homicide. Id. at 17. AT the meeting, defendant McGown discussed with defendants Pedraza and Reveles and other APD detectives which children needed to be interviewed. Id. at 17-18. According to the plaintiffs, defendant McGown understood before she

went to the shelter that LaCresha might confess to the murder and she was aware the interview would be conducted by homicide detectives, not VSU personnel. Id. at 17-18.

The plaintiffs maintain defendant McGown arranged the interviews of LaCresha and Cleo at the shelter and ordered defendant Melissa Greer Atwood,[4] another APD Victim Services Counselor, to call the shelter to set up the interviews. Id. at 18. Defendant Atwood allegedly had also been present at the staff meeting and knew LaCresha was actually a suspect prior to her interview. Id.

Defendants Pedraza, Eells and McGown allegedly traveled together to the shelter for the

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[4] Although "Melissa Greer" is named as a defendant in this lawsuit, Melissa Greer Atwood has since married and changed her name and will be referred to in this order as Melissa Atwood. *See* Greer Mot. to Dismiss at 1 n. 1.

interviews. Id. at 19. In a conference room at the shelter, the plaintiffs contend defendants Pedraza and Eells conducted an interrogation that lasted two hours and forty minutes. They contend defendant McGown attended the interview but did not attempt to protect LaCresha's interest in anyway. Id. at 20. The detectives attempted to Mirandize LaCresha, but allegedly failed to administer the warnings in compliance with federal or Texas law. Id. Meanwhile, maintain the plaintiffs, another APD Detective, Mark Gilcrest, conducted a simultaneous interview of Cleo to give the impression that nothing illegal occurred in the interrogation of LaCresha. Id. at 20. After LaCresha's interrogation, the plaintiffs claim defendants McGown, Johnson,[5] and Pedraza

[5] Even though the plaintiffs alleged defendant Pedraza and Eells conducted the interrogation during which defendant McGown was

returned LaCresha to the reception area of the children's shelter where they had met her prior to the interrogation, left her there alone, but did not arrest her. Id. at 20. Late that evening after obtaining an arrest warrant, defendant Pedraza arrested LaCresha. Id. at 20. The DA's Office allegedly obtained a guardian ad litem for LaCresha the following day. Id. at 23.

After a trial, a jury found LaCresha engaged in delinquent conduct by committing the offense of injury to a child and sentenced her to 25 years confinement. *In re L.M.*, 993 S.W.2d at 287. On April 29, 1999, after the state appellate court overturned her adjudication of delinquency,

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present, they allege defendants McGown, Pedraza and Johnson returned LaCresha to the waiting room. The Court believes the plaintiffs meant Eells assisted in returning LaCresha to the waiting room, but will nevertheless assume both defendants were involved in the interrogation because the Court is bound to take the pleaded facts as true at the motion to dismiss stage.

LaCresha returned home to her family. *See* R. 7 Stmt. at 23. The state court dismissed all criminal charged against LaCresha on April 21, 1999. The plaintiffs filed the instant lawsuit against the police detectives, prosecutors and social worker involved in the above-described events on August 29, 2002.

Analysis

I. The Plaintiffs' Pleadings

In this case, the plaintiffs filed a 63-page original complaint. *See* Orig. Compl. The recitals in the complaint was at times repetitive and at other times completely unclear. Consequently, the Court ordered the plaintiffs to file an amended complaint with the hope the plaintiffs could streamline and clarify their allegations. *See* Jan. 22, 2003 Order. The Court also ordered the plaintiffs to file a Rule

Seven statement and state their specific factual allegations against each defendant for each cause of action so the Court could evaluate the defendants' potential qualified immunity. Id. The plaintiffs requested extra time to file these two pleadings, and the Court granted the motion and gave them until February 15 to file the amended complaint and Rule Seven statement. *See* Feb. 15, 2003 Order. As of March 5, 2003, the plaintiffs had failed to file either and again the Court ordered them to comply with its order of January 22, 2003 or face the consequence that their case would be dismissed. *See* Mar. 5, 2003 Order.

On March 11, 2003, the plaintiffs filed a 42-page amended complaint and a 53-page Rule Seven statement, thereby exceeding the total number of

pages of the original complaint that the Court had requested clarified. The two documents together did not succeed in making clear what the plaintiffs causes of action against each defendant individually were, and particularly, it did not make clear what actions on the part of each defendant constituted the basis of each of their claims against that defendant. For instance, in their amended complaint, they allege defendants Earle, Blazey, Emmons, City of Austin,[6] Knee, Reveles, Johnson, Pedraza, Eells, McGown, Greer, Chapmond and Morris violated their rights under the Fourteenth Amendment, and in support state:

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[6] The plaintiffs name "the City of Austin" separately as a defendant in this instance. Although the a waiver of service has been docketed for Stanley Knee, the Chief of APD, whom the plaintiffs sue in his official capacity, there is no waiver on file for the City of Austin. In light of the fact that in its most recent pleading, the Supplemental Rule Seven Statement, the plaintiffs list each defendant they are suing but do not include the City of Austin, the Court finds the plaintiffs only intended to sue Knee in his official capacity (and of course, such claims are construed as claims against the City of Austin).

> The acts of the Defendants, individually and as conspirators, deprived LaCresha Murray particularly, and the other Plaintiffs generally of life, liberty, and property without due process of law and denied them of the equal protection of the laws.

Am. Comp. at 24-25, ¶ 54. In their Rule Seven statement, the Plaintiffs include the *same exact paragraph* but do not include any specific allegations about acts committed by Morris or Pedraza or any other individual defendant. *See* R. 7 Stmt. at 41-42, ¶ 67. This type of repetitive and yet glib pleading is typical of how plaintiffs have continued to present this case to this Court. Frustrated with the energy it was requiring to decipher these pleadings and the delay in the development of this case, the Court at a status conference on June 23, 2003 again ordered the

plaintiffs to supplement its Rule Seven statement with a list that included the name of each defendant, the capacity in which each was being sued, the causes of action they were asserting against each defendant, and factual allegations in support each cause of action. *See* June 23, 2003 Order.

The plaintiffs thereafter submitted a 60-page document in response. *See* Supp. R. 7 Stmt. Not only that, the plaintiffs attached many appendices of trial court testimony from which it appears they expect the Court to draw its own inferences about potential factual allegations. Again, the documents do not contain much that helps the Court. To continue with the Fourteenth Amendment example, instead of saying, for instance, "Defendant Pedraza violated LaCresha's rights under the Fourteenth

Amendment by," and setting out the specific facts in support, the plaintiffs merely state Pedraza violated their Fourteenth Amendment Rights and then, in their subsection entitled "Factual Allegations," assert "Defendant Pedraza violated LaCresha Murray's rights under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution." *See* Supp. R. 7 Stmt. at 41-42. How the plaintiffs consider this a "factual allegation" is a mystery to the Court.

The Court is now out of patience and must evaluate the claims as pled. The Court is of course required to liberally construe the plaintiffs' various claims but makes clear it is under no obligation to research potential and better theories of the case and read them into the pleadings for the plaintiffs. As

the Fifth Circuit has explained, in § 1983 cases that involve claims of qualified immunity, courts should not tolerate slip-shod pleadings. *See Lynch v. Cannatella*, 810 F.2d 1363, 1371 (5th Cir. 1987). The Court now turns to the substance of the claims against the defendants in so far as the substance is discernable.

II. State Defendants' Motion to Dismiss

The plaintiffs have sued for damages the Executive Director of the Texas DPRS, Thomas Chapmond, in his official capacity and a DPRS case worker, Megan Morris, in her individual capacity. Chapmond and Morris have moved to dismiss the plaintiffs' claims against them for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6), and claim

that they are shielded from liability by Eleventh Amendment immunity and the doctrines of qualified and official immunity.

A. Motion to Dismiss Standard

In deciding whether to dismiss for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, "the Court must take the factual allegations as true, resolving any ambiguities or doubts regarding the sufficiency of the claim in favor of the plaintiff." *Fernandez-Montes v. Allied Pilots Ass'n*, 987 F.2d 278, 284 (5th Cir. 1993). The Court should then dismiss only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

B. Official Capacity Claims Against Chapmond

In their most recent pleadings, the plaintiffs clarified they are suing defendant Chapmond in his official capacity (i.e., DPRS) for the following: (1) breaching his fiduciary duties and its duty to monitor the actions of the DA, Children's Home, and police detectives; (2) violating the Americans with Disabilities Act ("ADA"); (3) violating §504 of the Rehabilitation Act; (4) violating Article I, Sections 9,10, and 19 of the Texas Constitution; and (5) violating Sections 54.03(e) and 51.09(b) of the Texas Family Code. *See* Supp. R. 7 Stmt. at 18-20.

1. Federal Claims

The Eleventh Amendment divests federal courts of jurisdiction over suits against states by its own citizens or citizens of a another state of foreign

states. U.S. CONST. AMEND. IX; *Pace v. Bogalusa City School Bd.*, 325 F.3d 609, 612-613 (5th Cir. 2003). A suit against a state official in his official capacity for monetary damages is considered an indirect suit against the state. *See Ford Motor Co. v. Dept. of Treasury*, 323 U.S. 459, 464 (1945); *Edelman v. Jordan*, 415 U.S. 651, 663 (1974). There are two exceptions to the general rule of sovereign immunity,[7] however, and a citizen can sue the state if: (1) Congress abrogated state sovereign immunity pursuant to § 5 of the Fourteenth Amendment in the statute under which the citizen is suing, or (2) the state waived its sovereign immunity by consenting to suit. Pace, 325 F.3d at 613.

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[7] Of course, the Eleventh Amendment does not preclude suits against state officers to enjoin violations of federal law. See Ex Parte Young, 209 U.S. 123, 149 (1908). In this case the plaintiffs do not sue for injunctive relief, they only sue for money damages.

Neither the ADA or § 504 of the Rehabilitation Act constitutes a valid abrogation of the states' Eleventh Amendment immunity. Id. As such, the plaintiffs' ADA and Rehabilitation Act[8] claims against Chapmond in his official capacity must be dismissed.

2. State Law Claims

The Eleventh Amendment precludes suits in federal court against a state for violations of state law as well. *See, e.g., Hughes v. Savell*, 902 F.2d 376, 478-79 (5th Cir. 1990) (interpreting *Pennhurst State Sch. and Hosp. v. Halderman*, 465 U.S. 89 (1984)). Therefore, this Court has no jurisdiction over the plaintiffs' state law claims against

[8] Regardless, the Court would have dismissed the plaintiffs' Rehabilitation Act claim against Chapmond because there is no claim against Chapmond under § 504 of the Rehabilitation Act in the plaintiffs' amended complaint.

Chapmond in his official capacity (i.e., the State of Texas) for money damages unless the state has waived its immunity from suit for these claims. *See Nueces County v. Ferguson*, 97 S.W.3d 205, 215 (Tex. App.-Corpus Christi 2002) ("[S]ince a suit against a person in an official capacity is simply another way of asserting a suit against the state, then if no suit against the state may lie due to sovereign immunity, no suit may lie against a person sued only in an official capacity."). The plaintiffs have not shown the state has waived its immunity for their claims under the Texas Constitution, the Texas Family Code, or their breach of fiduciary duty claim, and therefore the state law claims against Chapmond in his official capacity must also dismissed for lack of subject matter jurisdiction. *See*

Alcorn v. Vaksman, 877 S.W.2d 390, 404 (Tex. App.-Houston [1st Dist.] 1994, writ denied)(en banc)(holding state officials sued in their official capacities for monetary damages immune based on violations of the state constitution); *see also Carey v. Aldine Indep. Sch. Dist.*, 996 F.Supp. 641, 646 n. 3 (S.D. Tex. 1998)(citing *City of Beaumont v. Bouillion*, 896 S.W.2d 143, 146-150 (Tex. 1995), for the proposition "Texas does not recognize a right to damages for violation of the Texas Constitution.").

C. Individual Capacity Claims Against Morris

In their most recent filing, the plaintiffs clarified they are suing TPRS case worker Megan Morris in her individual capacity for: (1) violating the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution; (2)

violating Article I, Sections 9, 10, and 19 of the Texas Constitution; (3) violating Sections 54.03(e) and 51.09(b)(G) of the Texas Family Code; (4) conspiring to deprive the defendants of their constitutional and statutory rights under federal and state law; and (5) for violating her fiduciary duty to the plaintiffs and failing to monitor the actions of the APD and DA's Office. *See* Supp. R. 7 Stmt. at 23-24.

1. Federal Civil Rights Claims

The plaintiffs sued Morris for violating their Fourth, Fifth, Sixth, Eighth and Fourteenth Amendment rights and for "violat[ing] 42 U.S.C. § 1983." Am. Compl. ¶¶ 48-52, 54-55; *see also* Supp. R. 7 Stmt. at 23-24. The plaintiffs apparently fail to realize § 1983 does not create substantive rights; it

merely provides a remedy for substantive rights protected under the Constitution and federal laws. *See Oklahoma City v. Tuttle*, 471 U.S. 808, 816 (1985). To state a claim under 42 U.S.C. § 1983, a plaintiff must first allege he has been deprived of a constitutional right or a right secured by federal law. *See Baker v. McCollan*, 443 U.S. 137, 140 (1979); *Green v. State Bar of Texas*, 27 F.3e 1083, 1087 (5th Cir. 1994). The Court therefore must evaluate whether it should dismiss plaintiffs; claims that Morris, acting under the color of state law, violated their rights secured by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments. The Court notes "[p]laintiffs who assert claims under 42 U.S.C. § 1983 and other civil rights statutes, such as §

1985,[9] must plead the operative facts upon which their claim is based. Mere conclusory allegations are insufficient." *Holdiness v. Stroud*, 808 F.2d 417, 424 (5th Cir. 1987).

In spite of the several opportunities the Court has given the plaintiffs to revise their pleadings and provide detailed factual accounts, they have not stated any facts in support their constitutional claims against Morris. In fact, in their most recent pleading, the only factual allegation they assert

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[9] The plaintiffs have alleged a conspiracy to violate the plaintiffs' rights in several places in their pleadings, but have never invoked 42 U.S.C. § 1985. The plaintiffs may have been able to allege a cause of action under § 1985, which requires they allege the defendants engaged in a conspiracy for the purpose of depriving any person or class of equal protection of the laws or of privileges and immunities under the laws and that the plaintiffs suffered injury to their person or property or were deprived of a right or privilege of a United States citizen as a result of the conspiracy. *United Bhd. of Carpenters & Joiners v. Scott*, 463 U.S. 825, 828-29 (1983). The plaintiffs have alleged a conspiracy to deprive them of their rights under the Constitution, but do not allege a racial or other invidious class-based animus motivated the conspiracy as they must under § 1985. *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 267-68 (1993); *Horaist v. Doctors' Hosp. of Opelousas*, 255 F.3d 261, 270 (5th Cir. 2001). For this reason, the Court holds the plaintiffs have not stated a claim against Morris or any other defendant under § 1985, assuming they even intended to plead such a claim.

against Morris is she "participated in and permitted LaCresha Murray and other Murray children to be interrogated by Defendants of the City of Austin police Department, without the presence of a TDPRS person present or without providing the children with legal representation." Supp. R. 7 Stmt. at 25. The factual allegations against Morris solely concern her "involvement" in the interrogation of LaCresha and her siblings, not any issues surrounding a search or arrest (Fourth Amendment) or the conditions LaCresha's post-conviction incarceration (Eighth Amendment).[10] Under Holdiness, the plaintiffs' bald assertion Morris violated "LaCresha Murray's rights under

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[10] The Supreme Court has held the Eighth Amendment's proscription of cruel and unusual punishment was designed to protect those convicted of crimes. *Ingraham v. Wright*, 430 U.S. 651, 664 (1977). LaCresha was not yet convicted of a crime at the time the events giving rise to the lawsuit occurred.

the Fo[illegible]h [and] Eighth. . .Amendments" does not save either claim. Moreover, closer scrutiny of the plaintiffs' description of the events surrounding LaCresha's allegedly unconstitutional (under the Fifth Amendment) interrogation reveals not only that the plaintiffs never allege Morris participated in the interrogations, it reveals they actually allege she had not been informed LaCresha was a suspect in the murder at the time the interrogation occurred. *See* Supp. R. 7 Stmt. at 13-14, 15. Similarly, that the plaintiffs allege in their factual allegations that Morris had no knowledge LaCresha would be interrogated as opposed to interviewed dooms any claim Morris violated LaCresha's rights under the Fourteenth Amendment. *See Doe v. Taylor Independent School Dist.*, 15 F.3d 443, 452 (5th Cir.

1994) (recognizing that the Due Process Clause may give rise to an affirmative duty on the part of the state to protect particular individuals in its charge because of the "special relationships" between the state the individuals in its charge), *cert. denied, Lankford v. Doe*, 513 U.S. 815 (1994). Because the plaintiffs have failed to allege any facts that support any constitutional claims under § 1983 against Morris, the Court will dismiss the claims under Rule 12(b)(6).

2. State Law Claims Against Morris

a. Claims Under the Texas Constitution

In addition to asserting claims against Morris in her individual capacity for violating carious federal constitutional provisions, the plaintiffs allege

Morris violated their rights under Article I., Section 9, 10 and 14 of the Texas Constitution. The Court has already addressed that the plaintiffs have not stated facts that support a claim that Morris violated their self-incrimination rights or their rights to be free from unreasonable searched and seizures, and now dismisses their claims against Morris under Article I, Sections 9 and 10 of the Texas Constitution for the same reason. Additionally, the plaintiffs have alleged absolutely no facts in support of their allegation that Morris violated their rights not to be subjected to double jeopardy, and accordingly the plaintiffs' Article I, Section 14 claim must be dismissed as well. Furthermore, at least one Texas Appellate Court has interpreted Texas Supreme Court precedent and concluded state

employees cannot be sued in their individual capacities for monetary damages for violations of the Texas Constitution. *See Vincent v. West Texas State University*, 895 S.W.2d 469, 475 (Tex. App.-Amarillo 1995).

b. Claims under the Texas Family Code

The plaintiffs cites no authority demonstrating the provisions of the Texas Family Code they allege Morris and the other defendants violated support a civil cause of action. Sections 54.03(e) and 51.095[11] of the Texas Family Code concern the admissibility of extra-judicial statements made by juveniles. Any

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[11] The plaintiffs actually claim the defendants violated § 51.09(b)(G), presumably a reference to the statute in effect in 1996 although the plaintiffs never explicitly say so. Because the events giving rise to this lawsuit took place in 1996, the law as it was in effect in 1996 governs the case. In 1997, the subsection (b) of § 51.09 was moved to the newly created § 51.095. *See In re L.M.*, 993 S.W.2d 276, 285 n. 11 (Tex. App.-Austin, 1999) (citing Act of May 14, 1997, 75th Leg., R.S., ch. 1086 § 4, 1997 Tex. Gen. Laws 4179, 4181-83). Because there were no substantive changes to the provision, the Court will refer to the current section in this opinion.

alleged violation of these statutes by Morris or any other defendant was remedied when the Texas Court of Appeals declared the confession inadmissible and reversed LaCresha's adjudication of delinquency. *In re L.M.*, 993 S.W.2d at 285 n. 11. Accordingly, the plaintiffs' claims under the Texas Family Code must be dismissed for failure to state a claim upon which relief can be granted.

c. Breach of Fiduciary Duty/Duty to Protect

The plaintiffs contend Morris "refused to protect LaCresha's constitutional rights" and failed to "properly perform her duties." Supp. R. 7 Stmt. at 23. As the Court has now repeated several times, the plaintiffs in their allegations state Morris was not aware LaCresha was going to be subjected to an interrogation instead of an interview. As such,

taking the plaintiffs' allegations as true, they do not support their claim that Morris "refused to protect LaCresha's right." Furthermore, the plaintiffs also claim to be suing Morris for not properly performing her duties. As an agent of the state being sued in her individual capacity, Morris is entitled to and has invoked official immunity. *See City of Hempstead v. Kmiec*, 902 S.W.2d 118, 120 (Tex. App.-Houston [1st Dist.] 1995). Morris is entitled to official immunity from suits arising out of the performance of her "(1) discretionary duties (2) in good faith as long as they are (3) acting within the scope of their authority." Id. Because the plaintiffs have not alleged facts or law adequate to overcome Morris's invocation of her official immunity on their breach

of fiduciary duty claim, this claim must also be dismissed.

d. Civil Conspiracy

Finally, The plaintiffs allege Morris engaged in a civil conspiracy with the other defendants to the violate the plaintiff's rights under state and federal law. To prove a cause of action for civil conspiracy under Texas law, a plaintiff must establish the following elements: "(1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result." Massey v. Armco Steel Co., 652 S.W.2d 932, 934 (Tex. 1983). Because the plaintiffs admit Morris was never aware that the police officers intended to subject LaCresha to an

interrogation, they do not allege she had a meeting of a minds with the other defendants who allegedly conspired to deprive LaCresha of her rights. Accordingly, the plaintiffs' civil conspiracy claim against Morris must also be dismissed.

III. Prosecutor Defendants' 12(c) Motion for Judgment on the Pleadings

A. Rule 12(c) Motion Legal Standard

The prosecutor defendants move under Rule 12(c) for judgment on the pleadings. FED. R. CIV. P. 12(c).[12] Under Rule 12(c), this Court "must look only to the pleadings and accept all allegations contained therein as true." *Brittan Communications Intern. Corp. v. Southwestern Bell Telephone Co.*, 313 F.3d 899, 904 (5th Cir. 2002), *cert. denied*, 123

[12] The prosecutors also moved for summary judgment in the alternative. However, because the plaintiffs have had no discovery, the Court must make this initial determination on the pleadings alone.

S.Ct. 2091 (2003). The Fifth Circuit recently cautioned that "[p]leadings should be construed liberally, and judgment on the pleadings is appropriate only if there are not disputed issues of material fact and only questions of law remain." *Id.* Therefore, just as it must do on a Rule 12(b)(6) motion to dismiss, the Court must evaluate whether the pleadings state a valid claim for relief when considered in the light most favorable to the plaintiffs. *Id.*

B. Allegations

The plaintiffs sued Travis County DA Ronnie Earle and ADAs Dana Blazey and Stephanie Emmons for money damages in their official and individual capacities alleging the following causes of action: (1) pursuant to § 1983, violation of

LaCresha's rights under the Fourth, Fifth, Sixth, Eighth, Thirteenth and Fourteenth Amendments;[13] (2) violation of Article I, Sections 9. 10. and 19 of the Texas Constitution; (4) violation of Section 54.03(e) and 51.09(b) of the Texas Family Code; (5) malicious prosecution; (6) defamation (libel and slander); and (7) conspiracy to violate the plaintiffs' state and federal rights.[14]

The plaintiffs allege ADAs Blazey and Emmons conspired with APD officers to deprive LaCresha of her right to counsel during a custodial interrogation. They claim the officers contacted Blazey and she advised them how they could

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[13] As the Court already explained, § 1983 is the vehicle through which the plaintiffs must bring their claims for constitutional violations and does not provide its own independent cause of action.

[14] For the reasons in explained in footnote 9 of this opinion, the Court construes the plaintiffs pleadings to allege a civil conspiracy cause of action under Texas law, but not a cause of action under 42 U.S.C. § 1985.

interview LaCresha without taking her before a magistrate even though she was the prime suspect in the Jayla Belton murder. See R. 7 Stmt. at 15. Emmons allegedly counseled the officers about what steps they should take to avoid the "custodial indicia" and therefore the need to advise LaCresha of her right to representation. Id. at 17. Both Emmons and Blazey allegedly participated in the discussion about and implementation of a plan to interrogate LaCresha without a lawyer, parent or guardian present. See Supp. R. 7 Stmt. at 11. The plaintiffs also allege Emmons and Blazey "knew" LaCresha was denied her Sixth Amendment right to counsel after arrest and "knew" LaCresha and her family members were "being subjected to cruel and unusual treatment in violation of the Eighth

Amendment by being denied living together as a family." Id. at 12, 17. Finally, the plaintiffs contend the ADAs participated in the malicious prosecution of LaCresha. Id. at 9, 14.

The plaintiffs contend DA Earle knew LaCresha's statement was going to be taken in violation of Texas and federal law. *See* Supp. R. 7 Stmt. at 4-5. They also contend the DA was aware of the conspiracy between his ADAs and the APD officers to interrogate LaCresha while she was alone. id. at 5, 6. They claim Earle failed to adequately train his ADAs, resulting in the aforementioned violations of LaCresha's rights. Id. at 7. The plaintiffs maintain Earle treated LaCresha differently than other children suspected of committing a crime because she is African

American. id. at 5. They also claim Earle "knew" LaCresha was being denied her right to counsel after arrest and that her own and her family's Eighth Amendment rights were being violated because they were being denied the right to live together. Id. at 6. Next, the plaintiffs allege Earle continued to prosecute the case against LaCresha even after he knew the prosecution would require the use of an illegal confession and the only other evidence against LaCresha was "marginally sufficient." Id. at 7. Finally, the plaintiffs claim Earle made untrue defamatory public statements about LaCresha prior to and after the trial, and even while dismissing the case, and contend those statements cause all of the plaintiffs to suffer.

C. Federal Civil Right Claims

1. Individual Capacity Claims

As prosecutors, defendants Earle, Blazey and Emmons are entitled to absolute immunity for the § 1983 claims against them in their individual capacities for their advocatory acts; for claims arising of all other acts (e.g., investigatory acts), they are only protected by qualified immunity. *See Buckley v. Fitzsimmons*, 509 U.S. 259, 269-71 (1993); Cousin v. Small, 325 F.3d 627, 631-32 (5th Cir. 2003).

a. Absolute Immunity

The plaintiffs have sued Blazey, Emmons and Earle for malicious prosecution. In their pleadings, they do not specify whether they intended to sue the prosecutors under the Fourth Amendment for

malicious prosecution in addition to suing them for the state law tort of malicious prosecution. In so far as that was their intention, the Fifth Circuit has recognized that "by pleading a claim for malicious prosecution under the Fourth Amendment, a plaintiff pleads an actionable claim under § 1983." *Castellano v. Fragozo*, 311 F.3d 689, 699 (5th Cir. 2002). However, all three prosecutors invoke their absolute immunity. The plaintiff's factual allegations are the DAs persisted in prosecuting them even though they were aware of LaCresha's confession was coerced and of the weakness of the other evidence. Prosecutors are absolutely immune from liability under § 1983 for "initiating a prosecution and presenting the State's case." and thus, Emmons, Blazey and Earle are entitled to

absolute immunity. *Cousin*, 325 F.3d at 631 (quoting *Burns v. Reed*, 500 U.S. 478, 486 (1991) (citations omitted)). "Willful or malicious prosecutorial conduct is egregious by definition, yet prosecutors are absolutely immune for liability for the advocatory function." *Id.* at 635. Accordingly, the plaintiffs' § 1983 Fourth Amendment claims against Emmons, Blazey and Earle in their individual capacities must be dismissed.

b. Qualified Immunity

The prosecutors assert they are protected by the doctrine of qualified immunity for any acts they undertook that are not prosecutorial in nature. The remaining factual allegations against Emmons and Blazey concern the advise they provided to the police detectives with regard to LaCresha's pre-

arrest questioning. Because these allegations concern investigatory and advisory acts, and not advocatory acts, Emmons and Blazey are only entitled to the limited protection afforded by qualified immunity, as opposed to the full-blown protection of absolute immunity. *See Burns*, 500 U.S. at 496 (holding dispensing legal advise to police officers is not a prosecutorial act). The remaining allegations against Earle concern the allegedly false statements he made to the press. Statements to the press are protected by qualified and not absolute immunity. *See Buckley*, 509 U.S. at 276 (1993) (holding statements to the press are not considered prosecutorial acts).

The test for qualified immunity involves two inquiries: "(1) whether the plaintiff has alleged a

violation of a clearly established constitutional right; and (2) if so, whether the defendant's conduct was objectively unreasonable in the light of the clearly established law at the time of the incident." *Domino v. Texas Dep't of Crim. Justice,* 239 F.3d 752, 755 (5th Cir. 2001). In determining the threshold question of qualified immunity on a motion to dismiss, before discovery, "the court must determine whether, assuming the truth of the plaintiff's allegations, the official's conduct violated clearly established law." *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998). A clearly established constitutional right is "sufficiently clear that a reasonable official would understand that what he is doing violates that right." Anderson v. Creighton, 483 U.S. 635, 640 (1987).

(i) ADAs Blazey and Emmons

The facts alleged by the plaintiffs state a Fifth, not Sixth, Amendment claim against Blazey and Emmons. The plaintiffs allege the two ADAs conspired to deprive LaCresha of representation during a custodial interrogation by the police, thereby compromising her right against self-incrimination. No formal judicial proceedings had been initiated at the time of her alleged interrogation. *See Self v. Collins*, 973 F.2d 1198, 1206 (5th Cir. 1992) ("The Fifth Amendment right to counsel during custodial interrogation is distinct from that under the Sixth Amendment, which attaches at the commencement of formal judicial proceedings against an accused and applies regardless of whether the accused is in custody."),

cert. denied, 507 U.S. 996 (1993). The Fifth Circuit has declared "axiomatic" that "the Fifth Amendment privilege against self-incrimination prohibits admitting statements given by a suspect during 'custodial interrogation' without a prior warning." *U.S. v. Gonzales*, 121 F.3d 928, 939 (5th Cir. 1997) (quoting *Illinois v. Perkins*, 496 U.S. 292, 296 (1990)), *cert. denied*, 522 U.S. 1063 (1998).

According to the Supreme Court, "custodial interrogation" is "questioning initiated by law enforcement officers after a person has been taken into custody." *Perkins*, 496 U.S. at 296 (quoting *Miranda v. Arizona*, 384 U.S. 436 (1966)). The Fifth Circuit considers a "suspect 'in custody' for purposes of Miranda when he is placed under formal arrest or when a reasonable person in the position of

the suspect would understand the situation to constitute a restraint on freedom of movement to the degree that the law associates with formal arrest." *Gonzales*, 121 F.3d at 940 n. 6. "' [I]nterrogation' refers to "[a] practice that the police should know is reasonably likely to evoke an incriminating response from a suspect.'" Id. at 940 n. 7 (quoting *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980)).

The plaintiffs have alleged the ADAs conspired with the detectives to interrogate LaCresha while she was in custody without properly advising her of her right against self-incrimination and her right to be represented, and that the police conducted the interrogation with the intent of eliciting a confession from her. They also allege the detectives eventually coerced a confession from

LaCresha that was used in her prosecution, which ultimately led to her conviction. Finally, the plaintiffs point out that conviction was overturned by a state appellate court on the grounds her confession was coerced. Therefore, the Court finds LaCresha (but none of the other plaintiffs) has alleged a violation of her clearly established Fifth Amendment rights by Blazey and Emmons.[15] Neither Emmons nor Blazey is entitled to qualified immunity on LaCresha's Fifth Amendment claims against them at this time. Of course, they may assert their qualified immunity defense again after discovery in a motion for summary judgment.

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[15] The Court notes this case is distinguishable from the Supreme Court's recent decision in *Chavez v. Martinez*, 123 S.Ct. 1994, 2000-2001 (2003). In that case, the Court held the § 1983 plaintiff failed to state constitutional violation against a police officer subjecting him to coercive custodial questioning because the statements elicited by the officer during the interrogation were never used against the plaintiff in a "criminal case." In this case the parties do not dispute that LaCresha's confession was used as evidence to prosecute and convict her.

As the Court has already explained, the facts alleged by the plaintiffs support a Fifth and not a Sixth Amendment claim, and therefore the plaintiffs' Sixth Amendment claims against the ADAs in their individual capacity must be dismissed. Additionally, the facts alleged do not state violations by either prosecutor of the any plaintiff's Eighth, Thirteenth, or Fourteenth[16] Amendment rights, and therefore the plaintiffs' Eighth, Thirteenth and Fourteenth Amendment

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[16] Of course the Fifth Amendment is made applicable to the states by the Fourteenth Amendment. *Chavez*, 123 S.Ct. at 2000. However, in so far as the plaintiffs are alleging a separate claim for violation of their Fourteenth Amendment rights, they have failed to adequately plead actions on the part of the defendants that support a Fourteenth Amendment claim. The Court notes that in so far as plaintiff were attempting to sue the prosecutors for failing to take LaCresha before a magistrate, the Fifth Circuit has held that the "rule in *McNabb v. United States*, 318, U.S. 332 (1943) [which] prohibits the use in [federal] criminal cases of confessions. . .where there was a failure to bring the accused before a committing magistrate without unnecessary delay. . .has not been extended to state prosecutions as a requirement of the Fourteenth Amendment." *West v. Johnson*, 92 F.3d 1385, 1404 (5th Cir. 1996).

claims against Emmons and Blazey in their individual capacities must also be dismissed.

(ii) DA Ronnie Earle

The plaintiffs do not allege that DA Earle was involved in giving advise to the detectives to help them in their effort to circumvent LaCresha's constitutional rights; instead, they allege simply that he knew what was going on. Earle can only be held liable in his individual capacity for his own individual actions. *See Evett v. DENIFF*, 330 F.3d 681, 689 (5th Cir. 2003) ("[A] plaintiff must show either her supervisor personally was involved in the constitutional violation or that there is 'sufficient causal connection' between the supervisor's conduct and the constitutional violation."). The plaintiffs do allege Earle failed to adequately train Blazey and

Emmons and their factual allegation that he was aware of their interactions with and advise to the police but failed to intervene suggests a claim for inadequate supervision as well. *See Taylor Indep. Sch. Dist.*, 15 F.3d at 452 (recognizing that while individual supervisors, like local governments, cannot be held vicariously liable for the actions of their subordinates, they can be held liable if they demonstrate deliberate indifference to the violations their subordinates commit).

To prevail on a claim for failure to train or supervise against Earle individually, the plaintiffs must eventually show: (1) Earle failed to train or supervise Emmons and Blazey, (2) a causal connection exists between that failure to train or supervise and the violation of the plaintiffs' rights;

and (3) the failure to train or supervise amounted to deliberate indifference to the plaintiffs' constitutional rights. Cousin, 325 F.3d at 637 (5th Cir. 2003) (*citing Thompson v. Upshur County*, 245 F.3d 447, 459 (5th Cir. 2001)). In the case of a claim for failure to train, a § 1983 plaintiff ordinarily must "demonstrate a pattern of violations and that the inadequacy of the training is 'obvious and obviously likely to result in a constitutional violation.'" Id. (quoting *Thompson*, 245 F.3d at 459). However, such a pattern need not be pled to survive a motion to dismiss. *Jamieson v. Shaw*, 772 F.2d 1205, 1213 (5th Cir. 1985). The Court will not dismiss LaCresha's § 1983 failure to train and supervise claim against Earle in individual capacity because she has alleged sufficient facts to state a

claim that her Fifth Amendment rights were violated due to Earle's failure to train the ADAs.[17] The Court notes however, LaCresha will have to present some evidence of a pattern of constitutional violations to survive a motion for summary judgment on this failure to train claim.

The only other non-prosecutorial acts by Earle the plaintiffs allege are his defamatory statements to the press. *See Buckley*, 509 U.S. at 276 (1993) (holding statements to the press are not considered prosecutorial acts). Of course, defamation is a state law tort, not a constitutional claim. However, in Buckley, the Supreme Court recognized defamatory statements to the press may be actionable under the § 1983 where they result in the deprivation of a

[17] Because none of the other plaintiffs have successfully alleged a constitutional claim against Blazey or Emmons, their failure to train claims against Earle must be dismissed.

constitutional right, for instance, the right to a fair trial. Id. The plaintiffs in this case have not alleged that Earle's allegedly defamatory statements resulted in the violation of their constitutional rights. As such, the Court will evaluate the plaintiffs' state law defamation claim separately, but must dismiss the plaintiffs' remaining § 1983 claims against Earle in his individual capacity for failure to allege a constitutional violation. The plaintiffs have not alleged Earle had anything to do with the conditions of LaCresha's post-conviction confinement (Eighth Amendment) or that he subjected the plaintiffs to involuntary servitude (Thirteenth Amendment). The claim under the Sixth Amendment fails for the same reasons the plaintiffs' Sixth Amendment claim against Emmons and Blazey failed – criminal

proceedings had not been initiated at the time of her alleged interrogation. The plaintiffs' Fourteenth Amendment claims against Earle fail because they have not pled any facts in support. Therefore, the plaintiffs' Sixth, Eighth, Thirteenth, and Fourteenth Amendment claims against Earle in his individual capacity are dismissed.

2. Official Capacity Claims

In addition to suing the Earle, Emmons and Blazey in their individual capacities, the plaintiffs have sued the prosecutors in their official capacities. "'Official-capacity suits. . .'generally represent only another way of pleading an action against an entity of which an officer is an agent.'" *Turner v. Houma Mun. Fire and Police Civil Service Bd.*, 229 F.3d 478, 483 (5th Cir. 2000) (quoting *Kentucky v.*

Graham, 473 U.S. 159, 165 (1985) (citations omitted)). When a prosecutors acts in an administrative or managerial capacity, he is considered an agent of the county; however, when a prosecutor acts in his prosecutorial capacity to enforce state penal law, he is considered an agent of the state. *Esteves v. Brock*, 106 F.3d 674, 678 (5th Cir. 1997), *cert. denied*, 522 U.S. 828 (1997). As the Court explained above, when an agent of the state is sued in his official capacity, this Court has no jurisdiction over the *state or federal* claims unless the state has waived its Eleventh Amendment immunity or Congress has successfully abrogated it. However, in those instances where the prosecutors act as agents of Travis County, this Court does have jurisdiction. But county officers are only held liable

in their official capacities (i.e., counties are only held liable) "for harm caused by the execution of an official policy or custom that deprives individuals of their constitutional rights." *Esteves*, 106 F.3d at 677.

a. Prosecutorial Acts

The malicious prosecution claims against Emmons, Blazey and Earle in their official capacities must be interpreted as claims against the state. In so far as the plaintiffs are suing the prosecutors under the Fourth Amendment in their official capacities for malicious prosecution, those claims are barred by the Eleventh Amendment because § 1983 does not abrogate a state's sovereign immunity. *Quern v. Jordan*, 440 U.S. 332, 341 (1979).

b. Non-Prosecutorial Acts

As the Court discussed above, advising police officers is not a prosecutorial act. *See Burns*, 500 U.S. at 496. Because all of the facts the plaintiffs allege in support of their official capacity claims against Emmons and Blazey for constitutional violations (except the malicious prosecution allegations) relate to their advise the police officers and their involvement in an allegedly unconstitutional and otherwise illegal interrogation, the Court construes the remaining official capacity claims against the ADAs as claims against Travis County. However, the plaintiffs have not alleged that Travis County has a policy or custom of conspiring to subject minors to illegal or unconstitutional interrogations, and therefore the

official capacity claims against the ADAs for violating LaCresha's Fifth Amendment rights must be dismissed. The Court already explained in the context of the plaintiffs claims against the ADAs in their individual capacities that the plaintiffs have not pled adequate facts to support a claim under the Sixth, Eighth, Thirteenth, or Fourteenth Amendments, and therefore unsurprisingly, they failed to plead that Travis County had a custom or policy of violating the rights protected by these constitutional amendments. As such, the claims against ADAs Blazey and Emmons in their official capacities for violating the Sixth, Eighth, Thirteenth, and Fourteenth Amendments must be dismissed.

For the reasons already explained, the claims against DA Earle in his official capacity for failing

to adequately train the ADAs is considered a claim against Travis County. In is well-settled that local government entities like counties can be held liable under § 1983 for failing to adequately train and supervise their employees if the failure results in constitutional violations and the plaintiffs demonstrates deliberate indifference on the part of the county. See Taylor Indep. Sch. Dist., 15 F.3d at 452-53. However, from the plaintiffs allegations, it is apparent that the plaintiffs are claiming Earle's supervision and training specifically led to Emmons and Blazey's alleged constitutional violations, as opposed to deficient training and supervision by Travis County. Therefore, the Court will dismiss LaCresha's official capacity claims against Earle for

failure to train or supervise even though it did not dismiss her individual capacity claims against him.

Statements to the press are not considered prosecutorial acts. Buckley, 509 U.S. at 276. Accordingly, the Court construes the plaintiffs' defamation claims against Earle in his official capacity, in so far as they implicate any constitutional right, as claims against Travis County. However, the plaintiffs do not allege that making false statements to the press is a custom or policy of Travis County, and accordingly, the § 1983 official capacity claims against Earle for his defamatory statements to the media, in so far as they implicated a constitutional right at all, must be dismissed. The plaintiffs have not pled that Travis County has a policy or custom of violating the Sixth, Eighth,

Thirteenth or Fourteenth Amendment either, so the remaining constitutional claims against Earle in his official capacity must also be dismissed.

D. State Law Claims

1. Official Capacity

Under Texas law, political subdivisions such as cities and counties are entitled to sovereign immunity from tort liability absent their consent to be sued. *Travis v. City of Mesquite*, 830 S.W.2d 94, 104 (Tex. 1992). Therefore the claims against the prosecutors in their official capacity, whether construed as claims against the state or Travis County, must be dismissed unless this immunity has been waived. As the Court addressed in the context of the plaintiffs' official capacity claims against Champond, officials sued in their official capacities

are immune from suit for money damages based on violations of the Texas Constitution. *See Alcorn*, 877 S.W.2d at 404. Therefore, the plaintiffs' official capacity claims against the prosecutors for violating Article I, Sections 9, 10 and 19 must be dismissed. Additionally, the official capacity claims against the prosecutors for violating Sections 51.095 and 54.03(e) of the Texas Family Code must be dismissed because the plaintiffs have not shown that Texas has waived its governmental immunity for such claims.

The Texas Tort Claims Act does waive the governmental immunity of cities and counties (and officials sued in their official capacities) for certain torts. *TRST Corpus, Inc. v. Financial Center, Inc.*, 9 S.W.3d 316, 322 (Tex. App.-Houston [14 dist.]

1999) (citing Tex. Civ. Prac. & Rem. Code Ann. § 101.021). However, it does not waive immunity for intentional torts like malicious prosecution and defamation. *See, e.g., Kmiec*, 902 S.W.2d at 122 (holding the Texas Tort Claims Act does not waive immunity from liability for malicious prosecution, false arrest or defamation). Neither does it waive immunity for civil conspiracy claims. *TRST Corpus*, 9 S.W.3d at 322. Accordingly, the plaintiffs' tort claims against the prosecutors in their official capacities must also be dismissed.

2. Individual Capacity

The plaintiffs also sued the prosecutors in their individual capacities for the same violations of state law. For the reasons already explained in the context of the individual capacity claims against

Morris, the claims under the Texas Constitution and Texas Family Code must be dismissed for failure to state a claim. *See, supra*, Sec. II.C.2.a & *b*. Additionally, because the plaintiffs have not provided the legal basis under Texas law for their argument that Emmons and Blazey owed the plaintiffs a fiduciary duty, these claims must be dismissed.

The prosecutors have invoked the affirmative defense of official immunity in response to the plaintiffs' remaining state law claims against them in their individual capacities – defamation (against Earle only), malicious prosecution, and civil conspiracy. *Kmiec*, 902 S.W.2d at 120 (citing *City of Lancaster v. Chambers*, 883 S.W.2d 650, 653 (Tex. 1994)). Under Texas law, "[g]overnmental

officials are entitled to official immunity from suits arising out of the performance of their (1) discretionary duties (2) in good faith as long as they are (3) acting within the scope of their authority." Id. An act is discretionary if it involves personal decision, deliberation and judgment. Id. An official acts in good faith if "a reasonable official could have believed his or her conduct to be lawful in light of clearly established law and the information possessed by the official at the time of the conduct." *Chambers*, 883 S.W.2d at 656.

a. Defamation

The plaintiffs sued Earle for libel and slander for the allegedly defamatory statements he made to the press. Under Texas law, "[s]lander is a defamatory statement that is communicated or

published to a third person without legal excuse." *Marshall v. Mahaffey*, 974 S.W.2s 942, 949 (Tex. App.- Beaumont 1998, writ denied). On the other hand, libel is:

> [A] defamation expressed in written or other graphic form that tends to. . .injure a living person's reputation and thereby expose the person to public hatred, contempt or ridicule, or financial injury or to impeach a person's honesty, integrity, virtue, or reputation or to publish the natural defects of anyone and thereby expose the person to public hatred, ridicule, or financial injury."

TEX. CIV.-PRAC. & REM. CODE § 73.001. The plaintiff in a libel or slander action must be the one against whom the allegedly defamatory statements were made. *See Baubles & Beads v. Louis Vuitton*, S.A., 766 S.W.2d 377, 381 (Tex. App.-Texarkana 1989, no writ) (libel); *Marshall*, 974 S.W.2d at 949

(slander). Because the allegedly defamatory statements Earle made to the press concerned LaCresha only, all of the other plaintiffs' defamation claims must be dismissed. And because the allegedly defamatory statements were spoken and not written, LaCresha's libel claim against Earle in his individual capacity must be dismissed. LaCresha has stated a claim for slander: namely, that Earle made untrue defamatory statements about LaCresha to the press prior to and after the trial and even while dismissing the charges, causing LaCresha damages. The remaining issue is therefore whether Earle is entitled to official immunity at this state on LaCresha's slander claim.

There is no question that Earle was acting within the scope of his authority as the DA of Travis

County when he allegedly defamed LaCresha. The Court holds the DA's statements to the press were discretionary acts because they involved personal decision and judgment. The remaining question is therefore whether Earle acted in good faith in making these statements. Because at the motion to dismiss stage, the Court must construe the plaintiffs' allegations as true, the Court cannot yet dismiss this claim. After some discovery, the Court will consider whether the evidence shows that Earle acted in good faith and is therefore entitled to official immunity, or whether a fact issue remains on that question that must be resolved by the jury.

b. Malicious Prosecution

The plaintiffs also sued the Earle, Emmons and Blazey or malicious prosecution. Under Texas

law, to state a claim for malicious prosecution, the plaintiffs must allege:

> (1) the commencement of a criminal prosecution against the plaintiff[s];
> (2) causation (initiation or procurement) of the action by the defendant[s];
> (3) termination of the prosecution in the plaintiff[s'] favor;
> (4) the plaintiff[s'] innocence;
> (5) the absence of probable cause for the proceedings;
> (6) malice in filing the charge; and
> (7) damage to the plaintiff[s].

Richey v. Brookshire Grocery Co., 952 S.W.2d 515, 517 (Tex., 1997). The prosecutors only commenced criminal prosecution against LaCresha. As such, the malicious prosecution claims by the other plaintiffs against the prosecutors must be dismissed. Moreover, LaCresha and the other plaintiffs never specifically allege her prosecution was undertaken without probable cause and the facts alleged, which

the Court must assume are true, do not support a finding that the prosecutors acted without probable cause. Therefore, LaCresha's malicious prosecution claim against the prosecutors in their individual capacities must be dismissed as well.

c. Civil Conspiracy

As the Court already explained, a plaintiff asserting a Texas law civil conspiracy claim must allege the following elements: "(1) two or more persons; (2) an object to be accomplished; (3) a meeting of the minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result." Massey, 652 S.W.2d at 934. The plaintiffs have alleged facts that support their claim that Emmons, Blazey and Earle conspired with the APD detectives to deprive LaCresha of her right

against self-incrimination guaranteed by the Fifth Amendment and by Texas law. Summary judgment evidence will reveal whether LaCresha can support a claim that Earle truly had a "meeting of the minds" with the other alleged co-conspirators. The prosecutors were certainly acting in their official capacities at the time and undertaking discretionary acts in dispensing advise to the detectives. However, evidence is required to resolve whether the prosecutors acted in good faith. Therefore LaCresha's civil conspiracy claims cannot be dismissed at this point before discovery has taken place. On the other hand the Court will dismiss the other plaintiffs' civil conspiracy claims for failure to state a claim.

IV. APD Defendants' 12(c) Motion for Judgment on the Pleadings

The APD Defendants have also moved for judgment on the pleadings under FED.R.CIV. P. 12(c).[18] Therefore, the Court must also evaluate the plaintiffs claims against the APD defendants and ascertain whether the pleadings state a valid claim for relief when considered in the light most favorable to the plaintiffs. *Brittan Communications*, 313 F.3d at 904.

The plaintiffs sued Knee, the APD Chief, in his official capacity, and defendants Reveles, Johnson, Pedraza, Eells, McGown, and Atwood in their individual capacities, alleging the following

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[18] The APD Defendant also moved for summary judgment. Because the Court suspended all discovery pending resolution of the motions to dismiss, it will consider the plaintiffs claims on the basis of the pleadings alone.

causes of action: (1) pursuant to § 1983, violation of LaCresha's rights under the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments;[19] (2) failure to provide Miranda warnings and advise LaCresha of her rights; (3) failure to present LaCresha to a Magistrate; (4) improper interrogation without an adult present; (5) violation of § 504 of the Rehabilitation Act; (6) failure to provide reasonable accommodations in violation of the ADA; (7) assault and battery; (8) false arrest and false imprisonment; and (8) conspiracy to violate the plaintiffs' state and federal rights. As the Court already explained in the context of plaintiffs' claims against the State Defendants, it will interpret the plaintiffs' "conspiracy" claim to allege a civil

[19] As the Court explained, § 1983 is the vehicle through which the plaintiffs must bring their claims for constitutional violations and does not provide its own independent cause of action.

conspiracy claim under Texas law rather than a claim under 42 U.S.C. § 1985.

A. Federal Causes of Action

1. Individual Capacity Claims

The plaintiffs have sued Detectives Pedraza, Reveles, Eells and Johnson and Victim Services Counselors McGown and Atwood in their individual capacities pursuant to § 1983 for money damages for violating their rights under the Fourth, Sixth, Eighth and Fourteenth Amendments. The defendants have moved to dismiss for failure to state a claim and on the grounds they are entitled to qualified immunity for their actions. As the Court iterated in the context of the plaintiffs' constitutional claims against the prosecutors, the test for qualified immunity involves two inquires: "(1) whether the

plaintiff has alleged a violation of a clearly established constitutional right; and (2) if so, whether the defendant's conduct was objectively unreasonable in light of the clearly established law at the time of the incident." *Domino*, 239 F.3d 752 at 755. Again, in determining the threshold question of qualified immunity on a motion to dismiss, before discovery, "the court must determine whether, assuming the truth of the plaintiff's allegations, the official's conduct violated clearly established law." *Crawford-El*, 523 U.S. at 598. A clearly established constitutional right is "sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson*, 483 U.S. at 640.

a. Fourth Amendment

The plaintiffs sued the APD defendant under the Fourth Amendment, which protects individuals against illegal searches and seizures. U.S. CONST. amend. IV. The first step in ascertaining whether the detectives and victim services counselors are immune is to establish whether assuming the plaintiffs allegation are true, they show the defendants violated their rights under the Fourth Amendment. In their Rule Seven statement, the plaintiffs do allege the Murray residence was searched but they do not allege that the search was undertaken without a warrant. See R. 7 Stmt. at 10, 39. They also allege LaCresha was falsely imprisoned and falsely arrested, presumably state tort law claims. But in so far as the plaintiffs are

alleging a Fourth Amendment claim challenging the constitutionality of her arrest, such a claim is actionable under § 1983. *Lewis v. Woods*, 848 F.2d 649, 651 (5th Cir. 1988) (citing *Baker v. McCollan*, 443 U.S. 137, 144-45 (1979)). But an arrest is constitutional under the Fourth Amendment if it is supported by a properly issued arrest warrant or probable cause. *Glenn v. City of Tyler*, 242 F.3d 307, 313 (5th Cir. 2001). In this case, the plaintiffs themselves allege defendant Pedraza arrested LaCresha pursuant to a warrant. See R. 7 Stmt. at 20. The Court will therefore dismiss the plaintiffs Fourth Amendment claims against the APD defendants.

b. Fifth & Sixth Amendments

As the Court addressed in the context of the individual capacity claims against Emmons and Blazey, the facts alleged by the plaintiffs state a Fifth and not Sixth Amendment claim against the APD defendants. The plaintiffs allege the counselors and detectives conspired with the ADAs to deprive LaCresha of representation during a custodial interrogation by the police, thereby compromising her right against self-incrimination. No formal judicial proceedings had been initiated at the time of her alleged interrogation. *See Self*, 973 F.2d at 1206 ("The Fifth Amendment right to counsel during custodial interrogation is distinct from that under the Sixth Amendment, which attaches at the commencement of formal judicial

proceedings against an accused and applies regardless of whether the accused is in custody."). As the Court has stated, the Fifth Circuit considers it wee-settled that "the Fifth Amendment privilege against self-incrimination prohibits admitting statements given by a suspect during 'custodial interrogation' without a prior warning." *Gonzales*, 121 F.3d at 939 (quoting *Perkins*, 496 U.S. at 296).

The plaintiffs have alleged the detectives conspired with the ADAs and victim services counselors to interrogate LaCresha while she was in custody without properly advising her of her right against self-incrimination and her right to be represented, and that they conducted the interrogation with the intent of eliciting a confession from her. As the Court pointed out before, the

plaintiffs also allege the detectives eventually coerced a confession from LaCresha that was used in her prosecution, which ultimately led to her conviction, and that conviction was overturned by a state appellate court on the grounds her confession was coerced. Therefore, the Court finds LaCresha (and none of the other plaintiffs) has alleged a violation of her clearly established Fifth Amendment rights by the APD defendants.[20] The defendants are therefore not entitled to qualified immunity on LaCresha's Fifth Amendment claims against them at this time before they have had the opportunity to conduct discovery.

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[20] The Court notes this case is distinguishable from the Supreme Court's recent decision in *Chavez v. Martinez* for reasons articulated in footnote 15.

c. Eighth Amendment

The Supreme Court has held the Eighth Amendment's proscription of cruel and unusual punishment was designed to protect those convicted of crimes. *Ingraham v. Wright*, 430 U.S. 651, 664 (1977). Specifically, the cruel and unusual punishment clause invoked by the plaintiffs: (1) limits the kinds of punishment that can be imposed on those convicted of crimes; (2) proscribes punishment grossly disproportionate to the severity of the crime; and (3) imposes substantive limits on what can be made criminal and punished as such. *Id.* at 667. Accordingly, since none of the plaintiffs other than LaCresha Murray were convicted of a crime, they cannot state a claim for an Eighth Amendment violation. Furthermore, the plaintiffs

have not alleged any of the APD defendants were involved in the imposition or implementation of LaCresha's sentence or punishment, and therefore LaCresha has also failed to state an Eighth Amendment claim against any defendant.

d. Fourteenth Amendment

The plaintiffs have simply failed to articulate sufficient facts to support their Fourteenth Amendment claim. They appear to challenge the conditions of LaCresha's confinement in the context of their Eighth Amendment claim even though the appropriate vehicle for challenging a pretrial detainee's conditions of confinement is the Fourteenth Amendment. *See Hare v. City of Corinth*, 74 F.3d 633, 639 (5th Cir. 1996). However, no where in their allegations do the

plaintiffs allege any of the APD defendants were employed by the detention center or jail or in any way involved in LaCresha's pretrial confinement. The facts alleged suggest the plaintiffs are challenging the detectives' and counselors' behavior in conjunction with LaCresha's arrest and alleged interrogation, behavior that should be challenged for the reasons just discussed under the Fourth and Fifth Amendments, not the Fourteenth. The plaintiffs' Fourteenth Amendment claim against the APD defendants should therefore be dismissed.

2. Official Capacity Claims

a. Constitutional Claims

The plaintiffs have sued Chief Knee in his official capacity, i.e., the City of Austin, under § 1983 for violating their rights under the Fourth,

Fifth, Sixth, Eighth and Fourteenth Amendments. *See Burge v. Parish of St. Tammany*, 187 F.3d 452, 468 (5th Cir. 1999) ("[A] suit against a governmental officer in his official capacity is the same as a suit against the entity of which the officer is an agent.") (quoting *Kentucky v. Graham*, 473 U.S. 159, 165 (1985)). While the City of Austin is not automatically immune from suit, it cannot be held liable under § 1983 for the actions of its individual employees or officials – rather, it can only be liable for adopting and implementing a formally declared policy, practice or custom that deprived the plaintiff of a constitutional right. See *Johnson v. Moore*, 958 F.2d 92, 93 (5th Cir. 1992); *Benavides v. County of Wilson*, 955 F.2d 968, 972 (5th Cir. 1992), *cert denied* by 506 U.S. 824 (1992).

The plaintiffs have failed to allege that the City of Austin as a policy of subjecting minors to unconstitutional interrogations, failing to provide Miranda warning, or refusing to take minors before magistrates.

They do, however, allege that the City of Austin failed to adequately train the APD employees, which led to the violation of their rights. *See* Am. Compl. ¶ 55; Supp. R. 7 Stmt. at 24 (citing Am. Compl. ¶ 55). As the Court discussed in the context of the plaintiffs' individual capacity claims against Earle,[21] to prevail on a claim for failure to train or supervise, the plaintiffs eventually must

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[21] The Court notes the plaintiffs sued Knee "Police Chief, City of Austin in his official capacity, therefore the City of Austin" whereas they sued Earle "Individually and as District Attorney, County of Travis, Austin, Texas." Supp. R. 7 Stmt. at 1, 25. This combined with the facts alleged against Knee and Earle makes clear tot he Court that the plaintiffs intended to sue Earle individually as Emmons and Blazey's supervisor, whereas they intended to sued the City of Austin for the failing to train the APD employees, and not Knee individually for anything he specifically did.

show: (1) the City of Austin failed to train or supervise the APD employees, (2) a causal connection exists between that failure to train or supervise and the violation of the plaintiffs' rights; and (3) the failure to train or supervise amounted to deliberate indifference to the plaintiffs' constitutional rights. *Cousin*, 325 F.3d at 637. The plaintiffs have alleged that City's failure to train its APD employees led to the violation of their constitutional rights. Because the Court has found LaCresha stated a claim against the APD defendants for violating her Fifth Amendment rights, the Court will not dismiss LaCresha's § 1983 failure to train claim against Chief Knee in his official capacity on Fifth Amendment grounds. The other plaintiffs' have not stated constitutional claims against the

APD defendants and have not otherwise alleged facts that support a claim that the City's failure to train led to a violation of *their* constitutional rights, and therefore, their § 1983 claims against Knee in his official capacity must be dismissed.

b. ADA and Rehabilitation Act Claims

The plaintiffs also sued the City of Austin (Knee in his official capacity) for failing to accommodate LaCresha under the ADA and for violating § 504 of the Rehabilitation Act.[22] Title II of the ADA provides that "no qualified individual

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[22] From their pleadings, it is apparent the plaintiffs were also attempting to sue the other APD defendants, presumably in their individual capacities under the ADA and Rehabilitation Act. However, by the explicit language of the statutes, claims are limited to suits against public *entities* (so therefore government officials in their official capacities as well), are therefore the claims against the APD defendants as individuals must be dismissed. *See Delano-Pyle v. Victoria County*, 302 F.3d 567, 574 (5th Cir. 2002) (holding employers, including the government entities covered by the statute are held liable under the doctrine of respondeat superior for violations of the ADA or Rehabilitation Act by their employees).

with a disability shall, by reason of such disability, by excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. In the opening provisions of the ADA, invoked by the plaintiffs in their amended complaint (¶ 64), Congress made findings that "discrimination against individuals with disabilities persists in such critical areas as. . .communications. . .and access to public services." 42 U.S.C. § 12101(a)(3). Similarly, the § 504 of the Rehabilitation Act prevents exclusion of individuals by public entities on the sole basis of their disabilities. 29 U.S.C. § 794. The Court considers these claims together because "[j]urisprudence interpreting either section is

applicable to both." *Hainze v. Richards*, 207 F.3d 795, 799 (5th Cir. 2000), *cert. denied*, 531 U.S. 959 (2000); *see also* 42 U.S.C. § 12133 (explaining the "remedies, procedures and rights" available under the Rehabilitation Act are also accessible under the ADA).

The plaintiffs' claim under the ADA is the City failed to provide LaCresha, "a disabled person with low intellectual functioning," with a reasonable accommodation, namely an adult to help her understand the police questions. Am. Compl. ¶ 65. Their claim under the Rehabilitation Act is that the City failed to provide LaCresha with a guardian or attorney and therefore failed to offer her a benefit equal to the benefit offered to those without disabilities. Id. at ¶ 66. However, the plaintiffs do

not allege anywhere that the police denied LaCresha her right to counsel or to a guardian, already actionable under the Fifth Amendment, "solely by reason" (or even "by reason") of her alleged disability as the statutes require. 29 U.S.C. § 794; 42 U.S.C. § 12132. In fact, the plaintiffs do not even allege the APD interrogators and investigators knew about her disability. Thus, the plaintiffs ADA and Rehabilitation Act claims against Knee in his official capacity must be dismissed for failure to state a claim.

B. State Law Claims

The plaintiffs have sued Knee in his official capacity and the other APD defendants in their individual capacities for the state law torts of assault

and battery, false arrest, and false imprisonment and for civil conspiracy.

1. Official Capacity Claims Against Knee

Just as the Court must dismiss the plaintiffs' tort law claims against Earle in his official capacity, the Court must dismiss the tort law claims against Knee in his official capacity. Knee in his official capacity, *i.e.*, the City of Austin, is entitled to sovereign immunity from tort liability absent the state's consent to be sued. *Travis*, 830 S.W.2d at 104. As the Court already explained, while the Texas Tort Claims Act does waive the governmental immunity of cities and counties (and officials sued in their official capacities) for certain torts, it does not waive immunity for intentional torts like assault and battery, false arrest, or false imprisonment or for

civil conspiracy. TEX. CIV. PRAC. & REM. CODE § 101.057; *Liu v. City of San Antonio*, 88 S.W.3d 737, 744 (Tex. App.-San Antonio 2002) (assault, battery, false imprisonment, or any other intentional tort); *TRST Corpus*, 9 S.W.3d at 322 (civil conspiracy). Accordingly, the plaintiffs' tort claims against Knee in his official capacity must be dismissed.

2. Individual Capacity Claims Against Other APD Defendants

Like the prosecutors, the APD defendants have invoked the affirmative defense of official immunity in response to the plaintiffs' state law claims against them. And like the prosecutors, the APD defendants are entitled to official immunity from suits "arising out of the performance of their (1) discretionary duties (2) in good faith as long as

they are (3) acting within the scope of their authority." Kmiec, 902 S.W.2d at 120. Again, an act is discretionary if it involves personal decision, deliberation and judgment. Id. And an official acts in good faith if "a reasonable official could have believed his or her conduct to be lawful in light of clearly established law and the information possessed by the official at the time of the conduct." Chambers, 883 S.W.2d at 656.

a. False Imprisonment /False Arrest

LaCresha alleges false arrest and false imprisonment claims against the APD defendants. She contends the police falsely arrested and imprisoned her "because they knew at the time they handcuffed her, detained her, and arrested her, they had violated well-established Texas law in obtaining

the statement from her." See R. 7 Stmt. at 29. Because the plaintiffs are complaining about an alleged false arrest and the "alleged [un]justness of the resulting imprisonment," the two claims are essentially the same. *See Villegas v. Griffin Industries*, 975 S.W.2d 745, 754 (Tex. App.-Corpus Christi 1998). "In order to establish civil liability for false arrest or false imprisonment, a plaintiff must show a wrongful interference with his freedom." *Id.* The elements the plaintiff must allege to state a claim are "(1) willful detention, (2) without consent, and (3) without authority of law." *Sears, Roebuck & Co. v. Castillo*, 693 S.W.2d 374, 375 (Tex. 1985). As a preliminary matter, the Court notes the plaintiffs allege *only* defendant Pedraza arrested *only* LaCresha. *See* R. 7 Stmt. at 20.

Accordingly the claims of the plaintiffs other than LaCresha against all of the APD defendants must be dismissed for failure to state a claim along with LaCresha's claims against all of the defendants except LaCresha. Moreover, according to the plaintiffs, LaCresha was arrested pursuant to a warrant and therefore "with the authority of law." *See* R. 7 Stmt. at 20. For this reason, LaCresha' false arrest and imprisonment claims against Pedraza must be dismissed as well.

b. Assault and Battery

LaCresha also contends Pedraza assaulted and battered her by handcuffing her. *See* Supp. R. 7 Stmt. at 29. Because the Court construes this as a restatement of her claim that she was wrongfully arrested and imprisoned, the Court will dismiss this

claim against Pedraza and the other APD defendants.

c. Civil Conspiracy

The plaintiffs also sued the APD defendants for conspiring to violate their rights. The Court finds for the same reasons that it did in the case of the prosecutors that LaCresha has a successfully stated a claim against the APD defendants for conspiring to violate her right against self-incrimination guaranteed by the Fifth Amendment and by Texas law. As the summary judgment stage, LaCresha will bear the burden to produce evidence that each APD defendant had a "meeting of the minds" with the other alleged co-conspirators. While the APD defendants were acting within the scope of their authority and undertaking

discretionary acts in deciding how to conduct the investigation and interrogation of LaCresha, evidence is necessary to determine whether they acted in good faith. Therefore LaCresha's civil conspiracy claim against the APD defendants in their individual capacities cannot be dismissed at this point before discovery has taken place, although the other plaintiffs' civil conspiracy claims must be dismissed for failure to state a claim.

In accordance with the foregoing:

IT IS ORDERED that Defendants Morris and Chapmond's Motion to Dismiss [#44] is GRANTED and all claims against both defendants (Chapmond in his official capacity and Morris in her individual capacity) are hereby DISMISSED;

IT IS FURTHER ORDERED that Defendants Ronnie Earle, Dayna Blazey and Stephanie Emmons's Second Motion to Dismiss Pursuant to Rule 12(c) [#58] is DENIED with respect to LaCresha Murray's individual capacity claims against Emmons and Blazey pursuant to 42 U.S.C. § 1983 for violating the Fifth Amendment; DENIED with respect to the LaCresha Murray's individual capacity claims against Earle pursuant 42 U.S.C. §1983 for failure to train or supervise that resulted in violations by Emmons and Blazey of the Fifth Amendment; DENIED with respect to LaCresha Murray's slander claim against Earle in his individual capacity; and DENIED with respect to LaCresha Murray's civil conspiracy claims against Emmons, Blazey and Earle in their individual

capacities under Texas law. The motion is in all other respects GRANTED and all of the claims asserted by the plaintiffs other than LaCresha Murray and the remaining claims asserted by LaCresha Murray against Earle, Emmons and Blazey in their individual and official capacities are hereby DISMISSED;

IT IS FURTHER ORDERED that the City Defendants' 12(c) Motion [#59] is DENIED with respect to LaCresha Murray's individual capacity claims against the APD defendants pursuant to 42 U.S.C. § 1983 for violating the Fifth Amendment; DENIED with respect to the LaCresha Murray's official capacity claims against Knee pursuant 42 U.S.C. § 1983 for failure to train or supervise that resulted in violations of LaCresha Murray's Fifth

Amendment rights; and DENIED with respect to LaCresha Murray's civil conspiracy claims against the APD defendants in their individual capacities under Texas law. The motion is in all other respects GRANTED and all of the claims asserted by the plaintiffs other than LaCresha Murray and the remaining claims asserted by LaCresha Murray against the APD defendants in their individual capacities and Knee in his official capacity are hereby DISMISSED;

IT IF FURTHER ORDERED that Defendant Melissa Atwood Greer's Motion to Dismiss and Rule 56 Motion for Summary Judgments [#57] is DISMISSED AS MOOT;

IT IS FURTHER ORDERED that the only claims that remain in this case are: (1) LaCresha's

Murray's individual capacity claims against Emmons and Blazey pursuant to 42 U.S.C. § 1983 for violating the Fifth Amendment; (2) LaCresha Murray's individual capacity claims against Earle pursuant 42 U.S.C. § 1983 for failure to train or supervise that resulted in violations by Emmons and Blazey of the Fifth Amendment; (3) LaCresha Murray's slander claim against Earle in his individual capacity; (4) LaCresha Murray's civil conspiracy claims against Emmons, Blazey and Earle in their individual capacities under Texas law; (5) LaCresha Murray's individual capacity claims against the APD defendants pursuant to 42 U.S.C. § 1983 for violating the Fifth Amendment; (6) LaCresha Murray's official capacity claims against Knee pursuant 42 U.S.C. § 1983 for failure to train

or supervise that resulted in violations of LaCresha Murray's Fifth Amendment rights; and (7) LaCresha Murray's civil conspiracy claims against the APD defendants in their individual capacities under Texas law;

IT IS FURTHER ORDERED that the parties shall RESUME DISCOVERY and the parties shall COMPLETE DISCOVERY within 90 days of the date this order is entered;

IT IS FURTHER ORDERED that all dispositive motions shall be FILED within 90 days of the date this order is entered;

IT IS FINALLY ORDERED that this case, originally set for docket call on August 29, 2003 and trial in the month of September 2003, is RESET for

docket call on Friday, November 21, 2003 with trial in the month of December 2003.

SIGNED this the 30th day of July 2003.

SAM SPARKS
UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

LACRESHA MURRAY; R.L. MURRAY and SHIRLEY MURRAY, Individually and as Next Friends of Cleo Murray, Jason Murray, Tyler Murray, and Trent Murray; and SHANTAY MURRAY, Individually,

Plaintiffs,

-vs- **Case No.A-02-CA-552-SS**

RONNIE EARLE, Individually and as District Attorney of Travis County, Texas; et al.,

Defendants.

ORDER

BE IT REMEMBERED on the 2nd day of December 2003 the Court reviewed the file in the above-styled cause, and specifically Defendants Earle, Blazey and Emmons' Second Motion for Summary Judgment [#101] and Plaintiff's response

thereto [#115], and the City Defendants' Second Supplemental Motion to Dismiss and Motion for Summary Judgment [#105] and Plaintiff's response thereto [#113]. Having considered the motions, responses, the relevant law, and the case file as a whole, the Court now enters the following opinion and orders.

Background

This case arises out of the investigation of plaintiff LaCresha Murray's alleged role in the death of two-year old Jayla Belton. After two jury trials, LaCresha Murray, eleven years of age at the time of Jayla Belton's death, was adjudged delinquent for committing the offense of injury to a child. Her adjudication of delinquency was overturned by a state appellate court on the grounds her confession

had been illegally obtained. *See in re L.M.*, 993 S.W.2d 276 (Tex. App.-Austin 1999, pet. denied). LaCresha Murray and her sister Shantay Murray filed this lawsuit, along with R.L. and Shirley Murray, LaCresha's grandparents and adoptive parents who sued individually and as next of friend of their minor children Cleo, Jason, Tyler, and Trent, against the police detectives, prosecutors, counselors and social workers involved in the interrogation and prosecution of LaCresha Murray. The plaintiffs sued the following individuals alleging they suffered more than $30 million in damages as a result of their violations of state and federal law: Travis County District Attorney Ronnie Earle in his official and individual capacities and Assistant District Attorneys Dayna Blazey and

Stephanie Emmons in their individual capacities; Executive Director of the Department of Protective and Regulatory Services("DPRS") Thomas Chapmond in his official capacity and DPRS caseworker Megan Morris in her individual capacity; and Austin Police Department ("APD") Chief Stanley Knee in his official capacity, along with APD Detectives Hector Reveles, Paul Johnson, Ernest Pedraza, and Albert Eells, and APD Victim Services Counselors Angela McGown and Melissa Greer Atwood in their individual capacities (collectively, except for Knee, the "APD defendants").

On July 30, 2003, this Court entered an opinion and order on the defendants' motions to dismiss and for summary judgment before any

discovery had taken place and set forth in a detailed manner plaintiff's allegations, which the Court will not repeat in this opinion. *See* July 30, 2003 Order at 1-8 (background). The Court dismissed all of the claims asserted by the plaintiffs other than LaCresha Murray and all claims asserted by LaCresha Murray except: (1) her individual capacity claims against Emmons and Blazey pursuant to 42 U.S.C. § 1983 for violating her rights under the Fifth Amendment; (2) her individual capacity claims against Earle pursuant 42 U.S.C. § 1983 for failure to train or supervise that resulted in violations by Emmons and Blazey her rights under the Fifth Amendment; (3) her slander claim against Earle in his individual capacity; (4) her civil conspiracy claims against Emmons, Blazey and Earle in their individual

capacities under Texas law; (5) her individual capacity claims against the APD defendants pursuant to 42 U.S.C. § 1983 for violating her rights under the Fifth Amendment; (6) her official capacity claims against Chief Knee pursuant to 42 U.S.C. § 1983 for failure to train or supervise that resulted in violations her Fifth Amendment rights; and (7) her civil conspiracy claims against the APD defendant in their individual capacities under Texas law.[1] The remaining defendants[2] have filed their second motions for summary judgment that are now ripe for consideration by this Court.

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[1] Disregarding the rulings of this Court, counsel for LaCresha Murray persists in referring to the claims of plaintiffs other than LaCresha Murray. The Court dismissed all claims asserted by LaCresha Murray's grandparents and siblings and will therefore ignore all arguments regarding the dismissed plaintiffs in the responses to the motions now pending before this Court. Similarly, the responses include arguments regarding the plaintiffs' dismissed claims under the Fourth, Sixth, Eighth, Thirteenth and Fourteenth Amendments. Because these claims have already been dismissed, the Court will not address them in this opinion.

[2] Morris and Chapmond were dismissed in the previous order. *See* July 30, 2003 Order at 12-18.

Analysis

I. Summary Judgment Standard

Summary judgment may be granted if the moving party shows there is no genuine issue of material fact, and it is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986). In deciding summary judgment, the Court should "construe all facts an inferences in the light most favorable to the nonmoving party." *Hart v. O'Brien*, 127 F.3d 424, 435 (5th Cir. 1997), *cert. denied*, 525 U.S. 1103 (1999). The standard for determining whether to grant summary judgment "is not merely whether there is a sufficient factual dispute to permit the case to go forward, but whether a rational trier of fact could find for the nonmoving

party based upon the record evidence before the court." *James v. Sadler*, 909 F.2d 834, 837 (5th Cir. 1990) (citing *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)).

Both parties bear burdens of producing evidence in the summary judgment process. Celotex Corp. v. Caltrett, 477 U.S. 317, 327 (1986). First, "[t]he moving party must show that, if the evidentiary material of record were reduced to admissible evidence in court, it would be insufficient to permit the nonmoving party to carry its burden of proof." *Hart*, 127 F.3d at 435 (citing *Celotex*, 477 U.S. at 327). The nonmoving party must then "set forth specific facts showing a genuine issue for trial and may not rest upon the mere allegations or denials of its pleadings." *Id.* (citing

FED. R. CIV. P. 56(e); *Anderson*, 477 U.S. at 249). However, "[n]either 'conclusory allegations' nor 'unsubstantiated assertions' will satisfy the non-movant's burden." *Wallace v. Texas Tech Univ.*, 80 F.3d 1042, 1047 (5th Cir. 1996). The non-movant is required "to identify specific evidence in the record and to articulate the precise manner in which that evidence supports his or her claim." *Ragas v. TennesSee Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998) (citing *Forsyth v. Barr*, 19 F.3d 1527, 1537 (5th Cir.), *cert. denied*, 513 U.S. 871 (1994). "'Rule 56 does not impose upon the district court a duty to sift through the record in search of evidence to support a party's opposition to summary judgment.'" *Id.* (quoting *Skotak v. Tenneco Resins,*

Inc., 953 F.2d 909, 915-16 & n. 7 (5th Cir.), *cert. denied,* 506 U.S. 832 (1992)).

II. Fifth Amendment Claims

A. Individual Claims Against Emmons, Blazey and the APD Defendants

LaCresha Murray contends each of the APD Defendants and Emmons and Blazey played a role in her illegal interrogation and therefore violated her rights under the Fifth Amendment. The prosecutors and APD Defendants deny that they violated LaCresha Murray's rights and contend that if they did violate a constitutional right it was not clearly established at the time they interviewed LaCresha Murray and are consequently entitled to qualified immunity. The qualified immunity doctrine shields state officials from suit in their individual capacity "insofar as [their] conduct does

not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *See also Anderson v. Creighton*, 483 U.S. 635 (1987). Qualified immunity "is designed to shield from civil liability all but the plainly incompetent, or those who violate the law." *Brady v. Fort Bend Cty.*, 58 F.3d 173, 174 (5th Cir. 1995). In the Fifth Circuit, "the test for qualified immunity is quite familiar: (1) whether the plaintiff has alleged a violation of a clearly established constitutional right; and (2) if so, whether the defendant's conduct was objectively unreasonable in the light of the clearly established law at the time of the incident." *Domino v. Texas Dep't of Crim. Justice*, 239 F.3d 752, 755 (5th Cir.

2001). If the summary judgment evidence, taken in the light most favorable to the plaintiff, suggests the answer to either question is "no," then defendant is immune from suit. *See Id.*

The first step in ascertaining whether each defendant is immune is to establish whether taken in the light most favorable to the plaintiff, the summary judgment evidence shows each defendant's conduct violated LaCresha Murray's clearly established rights under the Fifth Amendment. The Fifth Circuit has declared "axiomatic" that "the Fifth Amendment privilege against self-incrimination prohibits admitting statements given by a suspect during 'custodial interrogation' without a prior warning. *U.S. v. Gonzales*, 121 F.3d 928, 939 (5th Cir. 1997) (quoting *Illinois v. Perkins*, 496 U.S. 292, 296

(1990)), *cert. denied*, 522 U.S. 1063 (1998). According to the Supreme Court, "custodial interrogation" is "questioning initiated by law enforcement officers after a person has been taken into custody." Perkins, 496 U.S. at 296 (quoting Miranda v. Arizona, 384 U.S. 436 (1966)). The Fifth Circuit considers a "suspect 'in custody' for purposes of Miranda when he is placed under formal arrest or when a reasonable person in the position of the suspect would understand the situation to constitute a restraint on freedom of movement to the degree that the law associates with formal arrest." Gonzales, 121 F.3d at 940 n. 6. "'[I]nterrogation' refers to '[a] practice that the police should know is reasonably likely to evoke an incriminating response

from a suspect.'" *Id.* at 840 n. 7 (quoting Rhode Island v. Innis, 446 U.S. 291, 301 (1980)).

In his opinion overturning LaCresha Murray's conviction, Judge Yeakel of the Third Court of Appeals in Austin, Texas described the circumstances of LaCresha Murray's "interview" with the police, eventually holding the interview constituted a custodial interrogation:

> Appellant [LaCresha Murray] was involuntarily removed from her home by the Department and placed in a children's shelter pursuant to the emergency provisions of section 262 of the Family Code. *See* Tex. Fam. Code Ann. § 262.104 (West Supp. 1999). [Footnote omitted]. She had never been arrested or detained, and she had no experience with the legal system or law enforcement. While we agree with the juvenile court's finding that the shelter was not a jail or detention facility, the record before this Court does not support the juvenile court's finding that, under these circumstances,

the shelter was not a place of confinement. Pursuant to the show-cause order, the Department was made managing conservator of appellant and several of her siblings, and was granted the following rights, privileges, duties, and powers:

1. the duty of care, control, protection, and reasonable discipline of the subject Children;

2. the duty to provide the subject Children with clothing, food, and shelter; and

3. the power to consent to medical and surgical treatment for the health and safety of the subject Children.

The Department then placed appellant in the children's shelter, a provider agency under contract with the Department. Testimonial evidence presented at the hearing on the motion to suppress indicates that by its contract the shelter assumed the powers and duties granted to the Department over appellant by the show-cause order. Testimonial evidence also indicates that while the doors were not locked, appellant would have to "run away" in order to leave the shelter. Had appellant announced that she was leaving, employees of the shelter most

probably would have tried to restrain her. While appellant was not "incarcerated" in the children's facility, she was within the custody of the shelter and under its control, having been placed there by court order. She was not free to leav Even if appellant were technically "free" to leave, the evidence reflects that while her grandparents' home was in Austin, the children's shelter was in Round Rock, some miles apart. As an eleven-year-old, appellant totally lacked the means to voluntarily leave the shelter and return to her family. Finally, she was not returned to her grandparents' home even after law-enforcement authorities determined that there was no danger to her there. Therefore, we conclude that the evidence in the record clearly shows that at the time she was questioned, appellant was deprived of her freedom in a significant way.

Moreover, appellant's protective shelter became a place of isolation. When law-enforcement officers called the children's shelter and requested that appellant be made available for further questioning, the shelter neither notified appellant's grandparents of the scheduled interview nor provided appellant with a guardian, a parental

representative, or even an employee of the shelter for the interview. [FN16]. At the time of her interview, the police had shifted the focus of the homicide investigation from the adults in the grandparents' home and toward appellant; yet she was not taken before a magistrate before she was questioned. At the beginning of the interview, appellant was informed of her right to remain silent, her right to an attorney, and her right to terminate the interview at any time. [FN17]. She was not, however, told that she was free to leave the interview room or the children's shelter, and she was never told she could call her grandparents or any other friendly adult. Appellant was isolated and alone during the police interrogation. This was despite the fact that the shelter, through the Department, had the duty to care for and protect appellant. During the course of the interview, the officers informed appellant that they had "talked to everyone in [her] family already, and. . .cleared everybody," that "there's nobody left except [appellant]," and that they were "not going to go away." Based on the attendant circumstances outlined above, and taking into consideration the fact

that appellant was confined to the shelter at the time of her interview with police, we find that a reasonable eleven-year-old who had never before been through the legal system would believe that her freedom of movement had been significantly restrained. [FN18]. Accordingly, we hold that appellant was in custody at the time she made her statements.

FN16. Indeed, Texas courts require that a juvenile receive guidance from or the presence of a parent or other adult in loco parentis before waiving her constitutional privilege against self-incrimination under section 51.09 of the Family Code. *See E.A.W. v. State*, 547 S.W.2d 63, 64 (Tex. Civ. app.-Waco 1977, no writ). In this case, no parent or friendly adult was present during appellant's interview at the children's shelter. All adults present, including the victim-services counselor, represented the interests of the State, not appellant. Other states include the absence of a parent or guardian as a factor to consider in a totality of the circumstances analysis. *State v. John Doe*, 130 Idaho 811, 948 P.2d 166, 173 (App. 1997). ("[T]he objective test for determining whether an adult was in

custody for purposes of Miranda, giving attention to such factors as the time and place of the interrogation, police conduct, and the content and style of the questioning, applies also to juvenile interrogations, but with additional elements that bear upon a child's perceptions and vulnerability, including the child's age, maturity and experience with law enforcement and the presence of a parent or other supportive adult."); *State v. J.Y.*, 623 So.2d 1232, 1234 (Fla. Dist. Ct. App. 1993) ("'[U]nder the circumstances of this case, given the hour of night, given the nature of the questioning, the information the police had', '[t]he juvenile's age,' '[t]he lack of a parent being present,' and 'the type of questions being asked,' it is quite clear that 'anyone in [the juvenile's] position would not feel free to turn around and walk back in the house.'").

FN17. There was no evidence presented that anyone was assigned to protect appellant's rights or represent her interests. The victim-services counselor testified at the hearing on the motion to suppress that she attended the interview only to provide comfort to appellant if necessary.

> FN18. At one point during the course of the interview, the officers left the room, leaving appellant alone with the victim-services counselor. At that time she told the counselor that she wanted to leave the shelter and that she had to ask permission to go anywhere, further evidence that appellant believed she was not free to leave the children's shelter.

In re L.M., 993 S.W.2d 276, 289-291 (Tex. App.-Austin 1999), pet. denied).

As the state appellate opinion demonstrates, LaCresha Murray's freedom was, without a doubt, constrained at the time police questioned her and the questioners used tactics designed to elicit an incriminating statement. Therefore, LaCresha Murray's rights under the Fifth Amendment were violated. The APD defendants do not dispute that Detective Ernest Pedraza, Detective Albert Eells and

Victim Services Counselor Angela McGown were present at and involved in LaCresha Murray's illegal interrogation or that Hector Reveles sent Pedraza, Eells and McGown to conduct the interview. *See* City Defendants' Sec. Mot. at 10. And there is evidence in the record that suggests the police officers consulted with Emmons and Blazey about what steps they should take to avoid having present at the interrogation a parent, social worker, lawyer, advocate or other friendly adult. *See* Resp. to City Defendants' Sec. Supp. Mot. Ex. 1 ("Reveles Memo") at 2.[3] However, the uncontroverted evidence demonstrates Paul Johnson and Melissa Atwood did not attend the interrogation, did not advise those who did attend about how to avoid

[3] The Reveles memo, attached to the plaintiff's response to the APD Defendants' supplemental motion, was not objected to by the prosecutors or the APD Defendants on hearsay or any other grounds.

having a friendly adult present, and did not in any other way participate in the interrogation. Therefore, Melissa Atwood and Paul Johnson are entitled to summary judgment on the § 1983 claims against them.

This Court's inquiry, however, does not end with its conclusion there is evidence in the record that LaCresha Murray's rights under the Fifth Amendment were violated by Eells, Pedraza, McGown, Reveles, Emmons and Blazey. The defendants argue first, that it was not clearly established that the circumstances of LaCresha Murray's interrogation were unconstitutional at the time the police interviewed her, and second, that the Supreme Court decision in *Chavez v. Martinez*, 123 S.Ct. 1994 (2003) establishes that illegal

interrogations by police officers are not actionable under § 1983.

In *Chavez*, three Justices held (and two concurred in the judgment) that coercive custodial questioning does not violate an individual's rights under the Fifth Amendment if the statements elicited by the officer during the interrogation are never used against that individual in a criminal case. *Chavez*, 123 S.Ct. at 2000-2001. The same combination of Justices also suggested the violation of judicial prophylactic rules safeguarding the right against self-incrimination, i.e., failing to give Miranda warnings, does not amount to an actual constitutional violation as required for civil liability under § 1983. *Id.* at 2003-2004. Importantly, in this case the parties do not dispute LaCresha Murray's

coerced confession was used as evidence to prosecute and convict her. The basis of LaCresha Murray's claim is the actual coercive custodial questioning to which she was subjected, not the mere failure to warn her prophylactically. While the defendants concede the distinctions between this case and *Chavez*, they urge an expansive reading of *Chavez*: that violations of an individual's right against self-incrimination by coercive custodial questioning should never be actionable under § 1983, or at least not in those cases where a trial judge rules the confession admissible after a suppression hearing. The Court declines to expand the holding or rationale of *Chavez*, which is hardly a forceful pronouncement of the Supreme Court considering the slim majority concurring in the

judgment. Instead, the Court hold that in this situation, where a "confession" is obtained as a result of coercive questioning by two seasoned interrogators and is used to convict an eleven-year old girl who had been removed from her home and housed at a shelter by court order and who gave her statement without an adult or advocate present to represent her interests, and where the conviction is later overturned on the grounds the confession was coerced, that child may sue under § 1983 for damages she experienced as a result of the violation of her constitutional rights.

The defendants also argue if LaCresha Murray's rights under the Fifth Amendment were violated at all, the rights were not "clearly established" at the time of her interrogation. "For a

constitutional right to be clearly established, '[t]he contours of the right must be sufficiently clear that a reasonable official would understand what he is doing violates that right.'" *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443, 454-455 (5th Cir. 1994) (en banc) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)).. The defendants point to the fact that Judge Deitz, the state trial judge who presided over the delinquency proceedings, specifically found LaCresha Murray was not "in custody" at the time she was questioned at the children's shelter. The defendants characterize the appellate court opinion overturning the adjudication of delinquency as articulating a new legal standard that considers the age of the juvenile in determining whether a juvenile was "in custody." However, in the Fifth Circuit, it

has long been established that a suspect is "in custody" when "a reasonable person in the position of the suspect would understand the situation to constitute a restraint on freedom of movement to the degree that the law associates with formal arrest." *Gonzales*, 121 F.3d at 940 n. 6. A reasonable person in the position of LaCresha Murray at the time of her interrogation- an eleven year old girl who had been removed from her home by court order and placed in a shelter that she was not free to leave who was being questioned in a room by two adult men without an adult present that she knew or trusted- would not have felt free to leave the shelter or even the room. And, almost thirty years ago, a Texas appellate court state the obvious when it opined that an eleven year old child with a sixth-grade education

"cannot knowingly, intelligently, and voluntarily waive her constitutional privilege against self-incrimination in the absence of the presence and guidance of a parent or other friendly adult or of an attorney." *E.A.W. v. State*, 547 S.W.2d 63, 64 (Tex. Civ. App.-Waco 1977, no writ). So even if the state appellate court clarified the exact standard applicable to juvenile custodial interrogations, the "reasonable person in the position of the suspect" standard as it existed at the time of the interrogation would have put reasonable officials on notice that conducting the interrogation in the manner in which it was conducted would likely violate eleven year old LaCresha Murray's rights under the Fifth Amendment. The interrogating officers knew LaCresha Murray was a suspect in the murder, and

the evidence suggests the officers sought the advice of prosecutors to figure out what steps they could take to interview her out of the presence of a lawyer, parent or other friendly adult to guarantee a confession so that Jayla Belton's murder would not "remain unsolved."[4] *See* Reveles Memo at 2, 5 (stating the interrogation "was conducted with the full knowledge, advice and guidance from the Travis County D.A.'s Office" and that "it is critical to note that had the interrogations not been conducted the way they were (with an eye toward their legality and admissibility), Jayla Belton's death would be unsolved."). Therefore, the APD Defendants involved in the interrogation- Pedraza (interrogator),

[4] Officer Reveles' statement is particularly troubling because it demonstrates his lack of understanding of the unreliability of coerced confessions and that the constitutional safeguards attendant to the Fifth Amendment not only protect suspects from incriminating themselves, it also prevents wrongful convictions based on "confessions" elicited with coercive tactics.

Eells (interrogator), McGown ("counselor" at the interrogation) and Reveles (officer who sent the others to conduct the interrogation)- and the prosecutors who allegedly counseled the officers on how to best circumvent LaCresha's rights, Emmons and Blazey, are not entitled to qualified immunity or summary judgment on LaCresha Murray's Fifth Amendment claims against them.

B. Failure to Supervise/Train Claim Against D.A. Earle Individually

In the Court's July 30, 2003 Order, the Court did not dismiss LaCresha Murray's claim against District Attorney Earle in his individual capacity for failure to train or supervise Emmons and Blazey, but warned the plaintiff to survive a motion for summary judgment as opposed to a motion to dismiss, she would "have to present some evidence

of a pattern of constitutional violations." *See* July 30, 2003 Order at 25. Because the record does not contain any evidence of a pattern of constitutional violations, or for that matter, any evidence that supports the failure to train or supervise claim at all,[5] District Attorney Earle is entitled to summary judgment on this claim.

C. Failure to Train Claim Against Chief Knee Officially

Neither did the Court dismiss LaCresha Murray's failure to train claim against Chief Knee in his official capacity, i.e., the City of Austin,[6] for

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[5] To survive summary judgment on a failure to train or supervise claim against the District Attorney in his individual capacity, LaCresha Murray would have to present some evidence suggesting: (1) Earle failed to train or supervise Emmons and Blazey, (2) a causal connection exists between that failure to train or supervise and the violation of the plaintiff's rights; and (3) the failure to train or supervise amounted to deliberate indifference to the plaintiff's constitutional rights. *See Cousin v. Small*, 325 F.3d 627, 637 (5th Cir. 2003).

[6] *See Burge v. Parish of St. Tammany*, 187 F.3d 452, 468 (5th Cir. 1999) ("[A] suit against a governmental officer in his official capacity is the same as a suit against the entity of which the officer is an agent.") (quoting *Kentucky v. Graham*, 473 U.S. 159, 165 91985)).

failing to train its APD employees. *See* July 30, 2003 Order at 38-39. As the Court explained in that Order, the City of Austin is not automatically immune from suit, but it cannot be held liable under § 1983 for the actions of its individual employees or officials- rather, it can only be liable for adopting and implementing a formally declared policy, practice or custom that deprived the plaintiff of a constitutional right. *See Johnson v. Moore*, 958 F.2d 92, 93 (5th Cir. 1992); *Benavides v. County of Wilson*, 955 F.2d 968, 972 (5th Cir. 1992), *cert. denied by* 506 U.S. 824 (1992). LaCresha Murray alleges the City of Austin failed to adequately train the APD employees, which led to the violation of her constitutional rights. However, LaCresha Murray has presented no evidence that the City of

Austin has a custom, policy or practice of training its officers to improperly interrogate juveniles- in fact she has presented no evidence whatsoever regarding any APD interrogation policy. And the record contains no evidence: (1) the City of Austin failed to train APD employees, (2) a causal connection exists between that failure to train and the violation of LaCresha Murray's rights; or (3) that the City of Austin's failure to train amounted to deliberate indifference to the plaintiff's constitutional rights. *Cousin*, 325 F.3d at 637. Consequently, Chief Knee is entitled to summary judgment on LaCresha Murray's failure to train claim.

III. State Law Claims

A. Slander Claim Against D.A. Earle

District Attorney Earle contends he is entitled to summary judgment on LaCresha Murray's slander claim against him in his official capacity. Under Texas law, "[s]lander is a defamatory statement that is communicated or published to a third person without legal excuse." *Marshall v. Mahaffey*, 974 S.W.2d 942, 949 (Tex. App.-Beaumont 1998, writ denied). In its July 30, 2003 Order, this Court held "LaCresha has stated a claim for slander: namely, that Earle made untrue-defamatory statements about LaCresha to the press prior to and after the trial and even while dismissing the charges, causing LaCresha damages." *See* July 30, 2003 Order at 31. In his motion for summary judgment, Earle contends and presents evidence that he never made public statements regarding LaCresha

Murray that were untrue. *See* Earle's, et al., Sec. Mot. for Summ. J. Ex. A. Therefore, LaCresha Murray bears the burden to present or identify contradictory evidence in the record. Because LaCresha Murray has not produced to this Court (or at least identified so the Court can consider[7]) any specific defamatory statement by Earle to the press, she has failed to meet her summary judgment burden and Earle is entitled to summary judgment on this claim.

B. Civil Conspiracy Claims Against the Prosecutors and the APD Defendants

Finally, the APD Defendants and prosecutors contend they are entitled to summary judgment on

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[7] "Rule 56 does not impose upon the district court a duty to sift through the record in search of evidence to support a party's opposition to summary judgment." *Forsyth*, 19 F.3d at 1537. Nevertheless, the staff of this Court has spent numerous hours paging through the disorganized filings, as evidenced by the length and depth of the July 30th and this Order, but still found no evidence of any specific statement by Earle to the press.

LaCresha Murray's state law civil conspiracy claim against them individually.[8] To prove a cause of action for civil conspiracy under Texas law, a plaintiff must establish the following elements: (1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result." Massey v. Armco Steel Co., 652 S.W.2d 932, 934 (Tex. 1983). The plaintiff contends the defendants

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[8] The defendants contend they are entitled to summary judgment on this claim because the Court entered what is tantamount to a judgment on the civil conspiracy claims against the City of Austin when it held the City is entitled to governmental immunity on intentional tort claims, and therefore, under Section 101.106 of the Tort Claims Act, all governmental employees whose acts or omissions give rise to the claim against the governmental unit entitled to immunity are therefore also entitled to immunity. *Dallas County Mental Health and Mental Retardation v. Bossley*, 968 S.W2d 339, 344 (Tex. 1998). However, no judgment was issued in conjunction with the July 30, 2003 Order of this Court. Instead, after wading through the plaintiff's voluminous and poorly drafted pleadings, the Court dismissed all claims not supported by factual allegations or asserted against individuals or entities immune from suit under state or federal law. Additionally, the claims remaining in this case are for actions taken by the defendants in their individual capacities, including the § 1983 claims.

conspired to violate her rights under the Fifth Amendment.

The evidence presented by the defendants and uncontroverted by the plaintiffs demonstrates there is no evidence in the record: (1) Earle was involved in any pre-detention or pre-referral aspects of LaCresha Murray's case[9]; (2) Detective Paul Johnson was involved in planning or conducting the illegal interrogation of LaCresha Murray[10]; and (3) Melissa Atwood attended or planned the interrogation.[11] Therefore, the record does not support the plaintiff's allegations of civil conspiracy against these defendants and they are entitled to summary judgment.

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9 *See* Earle, et al. Sec. Mot. for Summ. J. Ex. A.

10 *See* City Defendants Sec. Supp. Mot. Ex. 3.

11 *See* City Defendants Sec. Supp. Mot. Ex. 2.

However, there is evidentiary support in the record the "interview was conducted with the full knowledge, advice, and guidance of prosecutors [presumably Blazey and Emmons] from the Travis Co. D.A.'s Office" and that the police contrived to interview LaCresha Murray without an adult present and utilized "recognized and acceptable methods in questioning a *suspect*" to increase their chances of procuring a confession and resolving the case. *See* Reveles Memo at 2, 5-6 (emphasis added). Furthermore, in the City Defendants' motion, they admit Reveles sent the detectives and McGown intending the interview be conducted in the manner in which it was actually conducted. Therefore, there is sufficient evidence in the record of a fact issues regarding whether Reveles, Pedraza, Eells,

McGown, Emmons and Blazey conspired to violate LaCresha Murray's rights under the Fifth Amendment, and whether they acted in good faith and should be entitled to official immunity.[12]

In accordance with the foregoing:

IT IS ORDERED that Defendants Earle, Blazey and Emmons' Second Motion for Summary Judgment [#101] is GRANTED IN PART and Defendant Earle is entitled to summary judgment on all claims against him;

IT IS FURTHER ORDERED that the City Defendants' Second Supplemental Motion to Dismiss and Motion for Summary Judgment [#105]

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[12] Under Texas law, state officials are entitled to official immunity from suits "arising out of the performance of their (1) discretionary duties (2) in good faith as long as they are (3) acting within the scope of their authority." *City of Hempstead v. Kmiec*, 902 S.W.2d 118, 120 (Tex. App.-Houston [1st Dist] 1995).

is GRANTED IN PART and Defendant Atwood, Defendant Johnson, and Defendant Knee are entitled to summary judgment on all claims against them;

IT IS FURTHER ORDERED that the claims that remain in this case to proceed to trial are LaCresha Murray's individual capacity claims against Pedraza, Eells, Reveles, McGown, Emmons and Blazey: (1) pursuant to 42 U.S.C. § 1983 for violating her rights under the Fifth Amendment, and (2) for civil conspiracy under Texas law.

IT IS FINALLY ORDERED that this case is set for jury selection and trial on the remaining claims against the remaining defendants on December 8, 2003, at 9:00 a.m. in Courtroom No. 2, United States Courthouse, 200 West Eighth Street,

Austin, Texas. Pretrial matters will be taken up at 8:30 a.m.

SIGNED this the 2nd day of December 2003.

SAM SPARKS
UNITED STATES
DISTRICT JUDGE

APPENDIX D

Murray v. Earle, 405 F.3d 278 (5th Cir. 03/31/2005)

[1] IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[2] No. 03-51379

[3] 405 F.3d 278, 2005.C05.0000556< http://www.versuslaw.com>

[4] March 31, 2005; as amended April 13, 2005

[5] **LACRESHA MURRAY, ET AL PLAINTIFFS LACRESHA MURRAY PLAINTIFF-APPELLEE,**
v.
RONNIE EARLE, ETC.; ET AL DEFENDANT DAYNA BLAZEY, INDIVIDUALLY AND AS AN ASSISTANT DISTRICT ATTORNEY OF TRAVIS COUNTY, TEXAS; STEPHANIE EMMONS, INDIVIDUALLY AND AS AN ASSISTANT DISTRICT ATTORNEY OF TRAVIS COUNTY, TEXAS; ANGELA MCGOWN, INDIVIDUALLY AND AS SUPERVISOR OF THE TRAVIS

COUNTY CHILD PROTECTIVE SERVICES; HECTOR REVELES, INDIVIDUALLY AND AS A DETECTIVE OF THE AUSTIN POLICE DEPARTMENT; ERNEST PEDRAZA, INDIVIDUALLY AND AS A DETECTIVE OF THE AUSTIN POLICE DEPARTMENT; ALBERT EELS, INDIVIDUALLY AND AS A DETECTIVE OF THE AUSTIN POLICE DEPARTMENT DEFENDANTS-APPELLANTS.

[6] Appeal from the United States District Court for the Northern District of Texas (A-02-CV-552-SS)

[7] The opinion of the court was delivered by: Wiener, Circuit Judge

[8] PUBLISHED

[9] Before WIENER and PRADO, Circuit Judges, and KINKEADE,*fn1 District Judge.

[10] Defendants-appellants Dayna Blazey, Stephanie Emmons, Hector Reveles,

Angela McGown, Ernest Pedraza and Albert Eells appeal the district court's denial of their motion for summary judgment on the grounds of immunity under federal and state law. They contend on appeal that they should not be held liable for coercing a confession from the minor plaintiff-appellee, LaCresha Murray, which ultimately led to her later-reversed conviction (and lengthy incarceration) for injury to a child.*fn2 We reverse.

[11] I. FACTS AND PROCEEDINGS

[12] This case arises out of the investigation of plaintiff appellee LaCresha Murray's ("LaCresha") involvement in the death of Jayla Belton, age two, in 1996. At the time of these events, LaCresha was eleven years old. She and her siblings lived with her grandparents, R.L. and Shirley Murray, who were her adoptive parents, as well. The Murrays also provided daycare in their home for several other children.

[13] Late in May of 1996, Jayla, who was routinely cared for by the Murrays, was dropped off at the Murray home by her

mother's boyfriend. During the course of the day, Jayla appeared to be ill. After she vomited at the lunch table, LaCresha's older sister, Shawntay, gave Jayla some medication and put her to bed. No one checked on Jayla until later that day. R.L. Murray testified that, late in the afternoon, LaCresha came in from outside and went to the back of the house, near the bedroom where Jayla was sleeping. R.L. then heard "thumping noises," but he assumed that LaCresha was playing with a ball and told her to stop. Shortly after that, LaCresha told R.L. that Jayla was throwing up and shaking. He asked her to bring Jayla to the front of the house, where he observed that Jayla appeared ill. He told Lacresha to take Jayla outside to warm her up.

[14] At 5:00 p.m., another parent arrived to collect her children and noticed that Jayla was sweating profusely. That parent urged R.L. to call 911, but he declined to do so. R.L. took Jayla to the hospital, however; she was pronounced dead at approximately 5:30 p.m.

[15] An autopsy conducted the following day revealed that Jayla had suffered a severe liver injury caused by a blunt blow to the

abdomen. This trauma had broken four of her ribs and split her liver into two pieces. The medical examiner concluded that Jayla had died within five to fifteen minutes after receiving the injury and also noted some thirty other bruises to her head, ear, forehead, back, shoulder, elbow, chest, and the left side of her torso. The examiner ruled Jayla's death a homicide.

[16] That same day, law-enforcement authorities removed all the children from the Murray home. They placed LaCresha and one of her sisters in Texas Baptist Children's Home, a private shelter for children which contracts with the State to provide foster care. At the time that these children were removed from their adoptive parents' home, the authorities believed that they were in danger. There is some dispute as to exactly when the police first began to suspect that LaCresha had killed Jayla, but the focus of the investigation had quickly shifted to LaCresha after law-enforcement authorities spoke with other members of the household.

[17] Three days after LaCresha had been removed from her adoptive parents' home, Detective Reveles directed Detectives

Pedraza and Eels, along with Angela McGown, the supervisor of the Travis County Child Protective Services, to interview LaCresha. It is undisputed that, by this time, the police no longer feared for LaCresha's safety but instead considered her a suspect in Jayla's death.

[18] Before the interview of LaCresha, Detectives Reveles and Pedraza consulted with assistant district attorney Emmons on the proper method of interrogating LaCresha. Emmons testified that, even though LaCresha had been at the Texas Baptist Children's Home for three days, none of the officials believed that she was in the custody of the State. In their minds, this obviated the need for them to take her before a magistrate, as required by Texas law for children who are in state custody. Pedraza and Eels gave LaCresha a Miranda warning before beginning to interrogate her, but they did not take her before a magistrate or notify her parents or attorney.

[19] The detectives questioned LaCresha at the Baptist Children's Home for approximately two hours, eventually eliciting a confession that she had dropped Jayla and

kicked her. The State then charged her with capital murder and injury to a child; the juvenile court ruled her confession admissible; and the jury convicted her of negligent homicide and injury to a child. Extensive publicity followed, presumably influencing the juvenile court to order a new trial on its own motion. At the second trial, the State charged LaCresha with injury to a child; her confession was again admitted; and the second jury convicted her. The juvenile court adjudicated LaCresha delinquent and sentenced her to twenty-five years in the custody of the Texas Youth Commission.

[20] Three years later, the Texas Court of Appeals reversed LaCresha's conviction.*fn3 The appellate court ruled that LaCresha had been in the custody of the State, that law-enforcement authorities had violated Texas law by not taking her before a magistrate prior to interrogating her, and that her confession was therefore inadmissible.*fn4

[21] LaCresha then brought suit in district court for damages against numerous individuals, some of whom were only tangentially related to the LaCresha's judicial

proceedings, asserting various violations of her constitutional and state rights. On motions for summary judgment, the district court dismissed all her claims except those against the Defendants——Appellants (collectively, "the defendants") for violations of her Fifth Amendment right against self-incrimination and for state law civil conspiracy. The defendants now appeal the denial of their summary judgment motions for qualified immunity on LaCresha's Fifth Amendment claims and for official immunity under state law on her civil conspiracy claims.

[22] We have jurisdiction over both appeals. A defendant may immediately appeal the denial of qualified immunity, even though it is not a "final decision" under 28 U.S.C. § 1291.*fn5 The Texas law of official immunity provides the same protection against both suit and liability as does the federal doctrine, so we also have jurisdiction to review denial of state law immunity claims on interlocutory appeal.*fn6

[23] II. ANALYSIS

[24] A. Standard of Review

[25] We review denials of grants of summary judgment de novo.*fn7 Summary judgment may be granted if the moving party shows there is no genuine issue of material fact, and it is entitled to judgment as a matter of law.*fn8 We construe all facts and inferences in the light most favorable to the nonmoving party when reviewing grants of motions for summary judgment.*fn9

[26] B. Fifth Amendment Violation: Qualified Immunity

[27] In undertaking a qualified immunity analysis, we must first determine whether the plaintiff has suffered a violation of his constitutional rights and, if so, whether a reasonable official should have known that he was violating the plaintiff's constitutional rights.*fn10 The district court held that, under these narrow circumstances —— an eleven-year-old child is removed from her home, housed at a private shelter by the State for three days, interrogated there for hours by two seasoned investigators to the point of

confession without an adult or advocate present to represent her interests, and is convicted largely on the strength of that confession —— the child may, after the conviction is overturned on the grounds that the confession was inadmissible, sue under § 1983 for damages she suffered as a result of the violation of her constitutional rights.*fn11 On appeal, the defendants insist that, even if LaCresha's right against self-incrimination was violated, § 1983 does not, or at least should not, provide her with a remedy. We hold that, because LaCresha cannot demonstrate that defendants acted unreasonably, in that their actions did not proximately cause the damages that she suffered, she may not maintain a Fifth Amendment cause of action against them under § 1983.

[28] 1. Constitutional Violation

[29] It is axiomatic that a criminal defendant's constitutional rights have been violated "if his conviction is based, in whole or in part, on an involuntary confession, regardless of its truth or falsity."*fn12 The Fifth Amendment privilege against self incrimination is a fundamental trial right

which can be violated only at trial, even though pre-trial conduct by law enforcement officials may ultimately impair that right.*fn13 The constitutional privilege against self-incrimination adheres in juvenile court proceedings just as it does in ordinary criminal court.*fn14 In fact, states must take greater care to protect juveniles against coerced confessions during police interrogations, because children are more likely to be induced to confess, and their confessions are less likely to be reliable.*fn15

[30] a. Custodial Interrogation

[31] An individual's Fifth Amendment right against self incrimination is implicated only during a "custodial" interrogation.*fn16 The Supreme Court defines "custodial interrogation" as "questioning initiated by law enforcement officers after a person has been taken into custody."*fn17 A suspect is "in custody" for these purposes either (1) when he is formally arrested or (2) "when a reasonable person in the position of the suspect would understand the situation to constitute a restraint on freedom of movement to the degree that the law

associates with formal arrest."*fn18 We review de novo the question whether an interrogation was custodial.*fn19

[32] The district court relied heavily on the reasoning of the Texas Court of Appeals in determining whether LaCresha was in the custody of the State during her interrogation. The Texas appellate court's initial determination whether LaCresha was in custody, though addressing the federal constitutional standard for "custodial interrogations," was undertaken solely for the purposes of the Texas law requiring that, if so, she should have been taken before a magistrate before the police questioned her.*fn20 This inquiry is apposite but not determinative of our de novo federal constitutional inquiry regarding "in custody," i.e., whether a reasonable person in LaCresha's position would have understood that his liberty was constrained to the extent associated with formal arrest.

[33] On the latter issue, the Texas appellate court held, in contrast to the Texas trial court, that LaCresha's interrogation was custodial, adopting and applying a "reasonable child" standard. The court

asked whether, under these circumstances, a reasonable child of eleven would have believed that her freedom of movement was constrained to the degree associated with formal arrest.*fn21 The appellate court emphasized that LaCresha was involuntarily removed from her home by the State and placed in a children's shelter pursuant to emergency provisions of section 262 of the Texas Family Code.*fn22 The state appellate court agreed with the state trial court that, for purposes of evaluating whether LaCresha was "in custody" for purposes of Texas state law, the Texas Baptist Children's home was not a jail or detention facility.*fn23 The appellate court diverged from the trial court, however, in ruling that (1) because the shelter assumed all duties of care and control over children residing there, it was a place of confinement; and (2) practically speaking, LaCresha was not free to leave, as she would have had to "run away" from the shelter, and she had no means of returning to her home.*fn24 Although the determination that the shelter was a "place of confinement" under Texas state law is not directly relevant to the question whether LaCresha was in custody during the ensuing interrogation, the state appellate court's underlying determinations

regarding the degree of restriction over LaCresha's movement imposed by the state is relevant to whether she would have felt her liberty to be constrained.

[34] The defendants protest that we ought not consider a suspect's age in evaluating whether he was "in custody" for purposes of a Fifth Amendment violation. Rather, they assert, we must use an objective test, asking only whether a reasonable person, not a reasonable child, would have concluded that his liberty was constrained.*fn25 The Supreme Court has endorsed this approach when confronted with an interrogation of a seventeen-year-old suspect, but the Court's conclusion rested on the assertion that the "custody inquiry states an objective rule designed to give clear guidance to the police, while consideration of a suspect's individual characteristics —— including his age —— could be viewed as creating a subjective inquiry."*fn26 Justice O'Connor wrote separately to emphasize that "[t]here may be cases in which a suspect's age will be relevant to the Miranda 'custody' inquiry" but that in Yarborough, the defendant was almost eighteen years old and it would be difficult "to expect police to recognize that a suspect is a juvenile when he is so close

to the age of majority."*fn27

[35] The case of an eleven-year-old is different. The police should have no difficulty recognizing that their suspect is a juvenile and adjusting their determination whether the suspect would understand his freedom of movement to be constrained accordingly. In any event, even if we were to ignore LaCresha's age at the time of her interrogation, we would still conclude that a reasonable individual of any age who is removed involuntarily from his home, housed by the State for three days, not informed that he is free to leave, and questioned by two police detectives in a closed interrogation room, would believe that his liberty was constrained to the degree associated with formal arrest.*fn28 We hold that LaCresha was "in custody" for purposes of evaluating her interrogation.

[36] b. Involuntary Confession

[37] Next, we must determine whether the statement that LaCresha gave while in custody was involuntary, making its introduction at her criminal trial violative

of her Fifth Amendment rights. Although LaCresha's statement was taken in violation of Texas law, this alone did not automatically produce a violation of her Fifth Amendment rights.*fn29 Once we have concluded that a juvenile's interrogation was custodial, we determine whether such a suspect's confession is coerced or involuntary by examining the totality of the circumstances surrounding the child's interrogation.*fn30 In addition to the fact that the interrogation was conducted in violation of state law, our examination includes consideration of the juvenile's "age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights."*fn31 The Supreme Court has admonished that the police are required to take special care to ensure the voluntariness of a minor suspect's confession:

[38] If counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced

or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.*fn32

[39] Every factor weighed in our analysis militates against the conclusion that LaCresha's statement was voluntary. At eleven years of age, she was far younger than the fifteen-year-old juvenile suspect whom we held to have voluntarily confessed in Gachot v. Stadler.*fn33 She had no experience with the criminal justice system, had been held in the custody of the State for three days, was unaccompanied by any parent, guardian, attorney, or other friendly adult, and was found to have below-normal intelligence by the court-appointed psychiatrist prior to her criminal trial, also in contrast to the Gachot defendant.*fn34

[40] LaCresha cannot be held to have knowingly and voluntarily waived her rights to be represented by counsel and to remain silent.*fn35 Other than having LaCresha sign a Miranda card, and briefly explaining her rights to her at the outset of the interrogation, the police took no precautions to ensure the voluntariness of her statement, let alone "special care." The

police made no effort to contact LaCresha's adoptive parents, and the shelter, which had assumed responsibility for her care, sent no representative with her to the interrogation. LaCresha was never told that she was free to leave or that she could call her adoptive parents or any other friendly adult. In addition, the police officers represented to LaCresha that they had already talked to everyone in her family, that everyone "knew" what happened, and that she could help her family only by telling the truth. We hold that LaCresha's statement was involuntary, and that its admission at trial violated her Fifth Amendment right against self incrimination.

[41] 2. Clearly Established Law

[42] To overcome a claim of qualified immunity, a plaintiff must establish that the right an official is alleged to have violated was "clearly established," i.e., sufficiently clearly defined that "a reasonable official would understand that what he is doing violates that right."*fn36 Although there need not be prior case law directly on point for a constitutional right to be clearly established, the state of the

law must be such that a reasonable officer would be on notice that his actions could violate a constitutional right.*fn37 Defendants argue that, even assuming arguendo that clearly established law should have put them on notice that their interrogation of LaCresha was custodial and that her statement was not made voluntarily, no clearly established law put them on notice that their actions could violate her Fifth Amendment rights.

[43] Defendants assert that a reasonable officer would not have understood that his actions could have violated LaCresha's Fifth Amendment rights because, as we discussed above, such a violation requires that (1) officials coerce an involuntary statement from a suspect and (2) this statement later be introduced against her at trial.*fn38 Therefore, because an officer cannot contemporaneously interrogate a suspect unlawfully and violate a suspect's Fifth Amendment rights, we must determine whether clearly established law should have alerted a reasonable official that his pre-trial conduct, although perhaps a but-for cause of the violation of the plaintiff's trial rights, could proximately cause a violation of her Fifth Amendment

rights.

[44] In a perfect world, trial courts protect defendants' Fifth Amendment rights by excluding improperly obtained confessions or statements.*fn39 In this real-world case, however, the trial court failed to protect LaCresha's rights. It is true that the officers wrongfully elicited LaCresha's confession during her interrogation and that this confession was later wrongfully admitted at trial and used against her, and ultimately resulted in her conviction; yet a trial judge twice heard all the evidence concerning the circumstances surrounding LaCresha's confession and twice admitted it into evidence. The defendants thus insist that, inasmuch as the decision whether to admit a criminal defendant's statement lies within the discretion of the presiding judge at trial, that judge's decision to admit LaCresha's confession was an independent, superseding cause of the violation of her Fifth Amendment rights.*fn40 Therefore, contend the defendants, because their improper questioning could not have caused the violation of LaCresha's Fifth Amendment rights, they should not be held liable for the violation.*fn41

[45] Section 1983 does require a showing of proximate causation, which is evaluated under the common law standard.*fn42 In cases like this one, we read § 1983 against the background of tort liability that makes a person liable for the natural consequences of his actions.*fn43 A corollary of these background tenets of tort law relieves tortfeasors from liability if there exists a superseding cause, or "an act of a third person or other force which by its intervention prevents the actor from being liable for harm to another which his antecedent wrongful act was a substantial factor in bringing about."*fn44 Defendants advance that the trial judge's decision to admit LaCresha's statement into evidence constitutes such a superseding cause, and that, absent any allegation or proof that they endeavored to mislead the judge into admitting an involuntary statement at trial, they cannot have acted "unreasonably" according to clearly established law for purposes of § 1983 liability.

[46] Albeit in dicta, the Supreme Court has intimated that this argument should not hold sway, at least with respect to false arrest claims. Although the Court in Malley v. Briggs conceded that the appellant police officer's argument that he

could not have proximately caused a defendant's unlawful arrest by filing an affidavit unsupported by probable cause was not before it on appeal, the Court stated that it would not have been receptive to this contention.* fn45 Malley states that § 1983 should be read against background tort law, which recognizes the liability of individuals for the consequences of their acts:

[47] Petitioner has not pressed the argument that in a case like this the officer should not be liable because the judge's decision to issue the warrant breaks the causal chain between the application for the warrant and the improvident arrest. It should be clear, however, that the District Court's "no causation" rationale in this case is inconsistent with our interpretation of § 1983. As we stated in Monroe v. Pape, 365 U.S. 167, 187 (1961), § 1983 "should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions.* fn46

[48] One year after Malley, we implicitly endorsed this approach in United States v. Burzynski Cancer Research Institute,

holding that Malley required us to reject a police officer's "superseding cause" arguments and examine only whether a reasonably well-trained officer would have known that his warrant application was unsupported by probable cause.*fn47 The following year, however, we decided Gary v. Hand, a false arrest case in which we held that, when a neutral intermediary, such as a justice of the peace, reviews the facts and allows a case to go forward, such an act "breaks the chain of causation."*fn48 We qualified our holding by stating that "the chain of causation is broken only where all the facts are presented to the grand jury, or other independent intermediary where the malicious motive of the law enforcement officials does not lead them to withhold any relevant information from the independent intermediary."*fn49 This holding in Gary was consistent with other circuit precedent,*fn50 yet we made no mention of Burzynski or of the Supreme Court's "proximate cause" footnote in Malley.

[49] The rule of Gary v. Hand has since prevailed in this circuit for almost two decades.*fn51 Even though Burzynski appears to contradict Hand's holding on

the issue of superseding cause, the earlier decision did not address the issue in depth, and we are unwilling to disregard firmly ensconced circuit precedent in favor of such a cursory analysis of Malley's dicta. A review of other circuits' case law addressing proximate cause when a plaintiff's injury results from an independent decision-maker's ruling also reveals a fundamental tension between these primary tenets of tort law: (1) An individual is liable for the reasonably foreseeable consequences of his actions, and (2) an intervening decision of an informed, neutral decision-maker "breaks" the chain of causation.*fn52

[50] In this circuit, it was not well-established at the time of LaCresha's interrogation that an official's pre-trial interrogation of a suspect could subsequently expose that official to liability for violation of a suspect's Fifth Amendment rights at trial. We hold that, as in the analogous context of Fourth Amendment violations, an official who provides accurate information to a neutral intermediary, such as a trial judge, cannot "cause" a subsequent Fifth Amendment violation arising out of the neutral intermediary's decision, even if a defendant can later demonstrate that his or

her statement was made involuntarily while in custody.*fn53

[51] LaCresha has not identified, and we have not found, any evidence in the record to indicate that the state judge who presided over her juvenile trial failed to hear (or was prevented from hearing) all of the relevant facts surrounding her interrogation before deciding to admit her confession into evidence. Armed with all those facts, that judge nevertheless concluded that LaCresha was not "in custody" for purposes of Miranda or Texas law governing the interrogation of minors, and ruled that her statement to the police was voluntary and admissible.*fn54 Like the state appellate court, we disagree with the trial court's ruling, yet we are constrained to hold that it constituted a superseding cause of LaCresha's injury, relieving the defendants of liability under § 1983. This holding pretermits our consideration whether she suffered a violation of a constitutional right that was clearly established at the time, and whether a reasonable official should have known that he was violating that right. Accordingly, we reverse the district court's denial of qualified immunity for the defendants on LaCresha's Fifth

Amendment claim.

[52] C. State Law Civil Conspiracy Claim

[53] LaCresha has also asserted a claim under state law, contending that the defendants conspired to deprive her of her Fifth Amendment rights. The elements of a civil conspiracy claim in Texas are: "(1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result."*fn55 A plaintiff asserting such a claim must prove that the defendants conspired to accomplish an unlawful purpose or used unlawful means to accomplish a lawful purpose.*fn56

[54] The defendants counter that, under Texas law, they are officially immune from suit for civil conspiracy.*fn57 In this interlocutory appeal, we have jurisdiction to hear the defendants' claim of official immunity because Texas law, like the federal doctrine, "provides a true immunity from suit and not a simple defense to liability."*fn58 As official immunity is

thus an affirmative defense, a state official seeking summary judgment on such grounds "must conclusively prove each element of the defense."*fn59

[55] Government officials in Texas are officially immune from liability for the performance of their (1) discretionary duties (2) in good faith (3) as long as they are acting within the scope of their authority.*fn60 A discretionary function —— as distinguished from a ministerial duty, which requires rote obedience to orders or performance of a function to which the actor has no choice —— involves personal deliberation, decision and judgment.*fn61 An officer acts in good faith if a reasonably prudent officer, under the same circumstances, could have believed that his actions were correct.*fn62 An officer acts within the scope of his authority when he discharges the duties generally assigned to him.*fn63

[56] The district court ruled, and LaCresha does not dispute, that the remaining defendants were performing discretionary functions and acting within the scope of their authority vis-à-vis her interrogation. That leaves only the question whether they

acted in good faith.

[57] To obtain official immunity on summary judgment, an official must prove that a reasonably prudent official might have believed that his action was appropriate under the circumstances.*fn64 Even if an official's actions were taken negligently, that would not be sufficient to defeat a showing of good faith.*fn65 The test for good faith is objective and is substantially derived from the test for good faith in a qualified immunity claim for federal constitutional violations.*fn66

[58] In light of our holding that the defendants are immune from prosecution for LaCresha's Fifth Amendment constitutional claim because they did not act unreasonably according to clearly established law, we also determine, by conducting the analogous state law inquiry under Texas state law,*fn67 that immunity bars LaCresha's civil conspiracy claim. As we have now determined, for purposes of the Fifth Amendment inquiry, that the officers did not conceal from the Texas trial court any of the circumstances surrounding LaCresha's interrogation and, therefore, that they did not cause the

violation of her rights, we are constrained to hold that they acted "in good faith" for purposes of Texas official immunity. A reasonable officer, under the circumstances, could have believed that what he was doing would not violate a suspect's Fifth Amendment rights —— certainly, if none of the officials could cause a violation of those rights, none could conspire to cause such a violation, particularly in view of our determination that the officials properly presented evidence of their interrogation of LaCresha to the Texas trial court. Therefore, the defendants are entitled to immunity from LaCresha's state law conspiracy claim.

[59] Further, our determination that the defendants did not commit an actionable violation with respect to LaCresha's Fifth Amendment violation bars a claim of civil conspiracy based on that violation, as "[g]enerally, if an act by one person cannot give rise to a cause of action, then the same act cannot give rise to a cause of action if done pursuant to an agreement between several persons."*fn68 Although LaCresha did suffer a violation of her constitutional rights, our determination that none of the state officials could have proximately caused this violation means

that none have committed a tortious act. As we conclude that LaCresha's claims against these defendants are unavailing, we reverse the district court, and remand for entry of summary judgment in favor of the defendants.

[60] The importance of deterring the improper obtaining of confessions, however, cannot be gainsaid. "A deliberate, voluntary confession of guilt is among the most effectual proofs in the law, and constitutes the strongest evidence against the party making it that can be given of the facts stated in such confession."*fn69 Justice White called a voluntary confession the most damaging form of evidence and noted that "[e]ven the testimony of an eyewitness may be less reliable than the defendant's own confession."*fn70 "Confession evidence (regardless of how it was obtained) is so biasing that juries will convict on the basis of confession alone, even when no significant or credible evidence confirms the disputed confession and considerable significant and credible evidence disconfirms it."*fn71

[61] A voluntary confession merits credence "because it is presumed to flow from the

strongest sense of guilt."*fn72 In diametric opposition, an involuntary confession constitutes evidence entitled to little weight, as it is likely to be unreliable.*fn73

[62] The privilege against self-incrimination is, of course, related to the question of the safeguards necessary to assure that admissions or confessions are reasonably trustworthy, that they are not the mere fruits of fear or coercion, but are reliable expressions of the truth. . .coercion is thought to carry with it the danger of unreliability.*fn74

[63] Involuntary confessions also affront society's "deep-rooted feeling that . . in the end, life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves."*fn75 These principles are doubly true in cases such as this one, in which the suspect is a young child whose statements are more likely to be the product of "fear, ignorance, fantasy, or despair."*fn76

[64] Nonetheless, the independent roles of police officers, prosecutors, and judges operate in this context to prevent individuals who have suffered violations of their Fifth Amendment rights from recovering for their damages, absent a showing that a neutral intermediary, such as a judge, did not have all pertinent information surrounding an interrogation before him when deciding a confession's admissibility. Therefore summary judgment in favor of the defendants is appropriate.

[65] III. CONCLUSION

[66] As LaCresha cannot demonstrate that the acts of the defendants in obtaining her confession proximately caused the violation of her Fifth Amendment rights, we hold that she may not maintain against the defendants either a claim under § 1983 for a constitutional violation or civil conspiracy claim under Texas law.

[67] REVERSED and REMANDED.

Opinion Footnotes

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[68] *fn1 District Judge, Northern District of Texas, sitting by designation.

[69] *fn2 In Texas, juvenile criminal adjudications are civil in nature, therefore, LaCresha's conviction is for a civil, not criminal, offense.

[70] *fn3 In re L.M., 993 S.W.2d 276, 291 (Tex. App. – Austin 1999, pet. denied).

[71] *fn4 Id.

[72] *fn5 Mitchell v. Forsyth, 472 U.S. 511, 524-25 (1985).

[73] *fn6 Roe v. Tex. Dep't of Protective & Regulatory Serv., 299 F.3d 395, 413 (5th Cir. 2002).

[74] *fn7 Tex. Med. Ass'n v. Aetna Life Ins. Co., 80 F.3d 153, 156 (5th Cir. 1996).

[75] *fn8 Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986).

[76] *fn9 Hart v. O'Brien, 127 F.3d 424, 435 (5th Cir. 1997), cert denied, 5525 U.S. 1103 (1999).

[77] *fn10 Hope v. Pelzer, 536 U.S. 730, 736, 739 (2002). Defendants Emmons and Blazey are each prosecuting attorneys in Travis County, however, they are entitled to claim only qualified immunity rather than the absolute immunity normally enjoyed by prosecutors. LaCresha is suing them for the legal advice which they provided the police investigators, for which they are not entitled to absolute immunity. See Burns v. Reed, 500 U.S. 478, 496 (1992)(holding that absolute immunity does not protect the prosecutorial function of giving advice to the police).

[78] *fn11 LaCresha spent three years in juvenile detention as a result of her conviction.

[79] *fn12 Miranda v. Arizona, 384 U.S. 436,

465 n.33 (1966). The Supreme Court has held that § 1983 plaintiffs do not have a Fifth Amendment claim against law-enforcement officials who have elicited unlawful confessions if those confessions are not then introduced against the plaintiffs in criminal proceedings. This case is distinguishable, as LaCresha's statement was admitted at trial and did result in her conviction. See Chavez v. Martinez, 538 U.S. 760 (2003).

[80] *fn13 Chavez, 538 U.S. at 767; United States v. Verdugo-Urquidez, 494 U.S. 259, 264 (1990)(internal citations omitted).

[81] *fn14 In re Gault, 387 U.S. 1, 30-31, 55 (1967).

[82] *fn15 Id. at 55. "[A]uthoritative opinion has cast formidable doubt upon the reliability and trustworthiness of 'confessions' by children." Id. at 52.

[83] *fn16 See Illinois v. Perkins, 496 U.S. 292, 296 (1990)(citing Miranda, 384 U.S. at 444); United States v. Gonzales, 121 F.3d 928, 939 (5th Cir. 1997)("It is axiomatic that 'the Fifth Amendment

privilege against self-incrimination prohibits admitting statements given by a suspect during 'custodial interrogation' without a prior warning.'")(quoting Perkins, 496 U.S. at 296).

[84] *fn17 Gonzales, 121 F.3d at 939 (5th Cir. 1997)(citing Perkins, 496 U.S. at 296)(internal quotations omitted).

[85] *fn18 Gonzales, 121 F.3d at 940 n.6 (citing United States v. Galberth, 846 F.2d 983, 986 n.1 (5th Cir. 1988) and United States v. Bengivenga, 845 F.2d 593, 596 (5th Cir.)(en banc), cert denied, 488 U.S. 924 (1988)).

[86] *fn19 United States v. Paul, 142 F.3d 836, 843 (5th Cir. 1998).

[87] *fn20 Texas law requires that a child be taken before a magistrate before interrogation if the child is in a detention facility or other place of confinement. Tex. Fam. Code. § 51.095(d)(1).

[88] *fn21 In re L.M., 993 S.W.2d 276, 289 (Tex. App. —— Austin, 1999, pet.

denied).

[89] *fn22 Id.

[90] *fn23 See Tex. Fam. Code. § 51.095(d)(1).

[91] *fn24 In re L.M. 993 S.W.2d 276, 289 (Tex. App. —— Austin, 1999, pet. denied).

[92] *fn25 See United States v. Gonzales, 121 F.3d 928, 940 n.6 (5th Cir. 1997)(citations omitted).

[93] *fn26 Yarborough v. Alvarado, 124 S. Ct. 2140, 2151-52 (2004).

[94] *fn27 Yarborough, 124 S.Ct. at 2152 (O'Connor, J., concurring).

[95] *fn28 See United States v. Collins, 972 F.2d 1385, 1405 (5th Cir. 1992)("[T]he most obvious and effective means of demonstrating that a suspect has not been taken into custody 'is for the police to inform the suspect that an arrest is not being made and that the suspect may

terminate the interview at will.'")(citing United States. v. Griffin, 922 F.2d 1343, 1349 (8th Cir. 1990)); United States v. Harrell, 894 F.2d 120, 124 n.1 (5th Cir. 1990)("We agree with the defendant that a detention of approximately an hour raises considerable suspicion," though declining to establish a bright-line rule for when a suspect's interrogation becomes custodial); United States v. Bengivenga, 845 F.2d 593, 600 (5th Cir. 1988)(holding that 90-second, routine citizenship check at Mexican border did not constitute custodial interrogation). Here, the act of the police in administering a Miranda warning should confirm their own belief that LaCresha was in custody.

[96] *fn29 See Gagne v. City of Galveston, 805 F.2d 558, 560 (5th Cir. 1986); United States v. Wilderness, 160 F.3d 1173, 1175 (7th Cir. 1998)("Indiana would not have permitted [the juvenile plaintiff's] confession to be used in a state prosecution. . . But . . .the voluntariness of a confession depends on public officials' compliance with constitutional norms, not on any rule of state law.").

[97] *fn30 Fare v. Michael C., 442 U.S. 707

(1979); Gachot v. Stadler, 298 F.3d 414, 418 (5th Cir. 2002).

[98] *fn31 Fare, 442 U.S. at 725; Gachot, 298 F.3d at 418-19 (quoting Fare, 442 U.S. at 725).

[99] *fn32 In re Gault, 387 U.S. 1, 55 (1967).

[100] *fn33 298 F.3d at 416, 421.

[101] *fn34 Id. (noting that the defendant was accompanied by his brother during the interrogation, voluntarily went to the police station for questioning, and was there for approximately four hours). Compare Fare, 442 U.S. at 726-27 (holding 16 1/2 year old juvenile voluntarily and knowingly waived his Fifth Amendment rights during an interrogation as he had considerable experience with the police, having a record of several arrests, sufficient intelligence to understand the rights he was waiving, and was not worn down by improper interrogation tactics or lengthy questioning by trickery or deceit) with Haley v. Ohio, 332 U.S. 596 (1948) (holding that a 15-year-old who had been arrested at

midnight, taken to a police station and subjected to continuous interrogation by a rotation of several police officers, without counsel or friend, until he confessed to participating in a robbery and shooting, had not voluntarily confessed).

[102] *fn35 See E.A.W. v. State, 547 S.W.2d 63, 64 (Tex. Civ. App. —— Waco 1977, no writ)(holding that an eleven-year-old child cannot knowingly, intelligently, and voluntarily waive her constitutional privilege against self-incrimination after spending nine hours, from midnight to nine a.m., in a detention facility, and without the guidance of a parent, guardian or attorney).

[103] *fn36 Anderson v. Creighton, 483 U.S. 635, 640 (1987).

[104] *fn37 Hope v. Pelzer, 536 U.S. 730, 741 (2002).

[105] *fn38 See Chavez v. Martinez, 538 U.S. 760, 770 (2003).

[106] *fn39 See Oregon v. Elstad, 470 U.S. 298,

307 (1985)(ruling that failure to Mirandize a witness before his confession automatically results in exclusion of the statement's use in the prosecution's case in chief); United States v. Blue, 384 U.S. 251, 255 (1966) ("Even if we assume that the Government did acquire incriminating evidence in violation of the Fifth Amendment, Blue would at most be entitled to suppress the evidence and its fruits if they were sought to be used against him at trial").

[107] *fn40 See Crowe v. County of San Diego, 303 F. Supp. 2d 1050, 1091-92 (S.D. Cal. 2004). The Crowe court also observed that it would be unfair to subject to civil liability under § 1983 only those police officers whose improper questioning produced statements admitted at trial but exonerate those officers whose questioning violated defendants' civil rights more egregiously, resulting in statements excluded by the trial court. 303 F. Supp. 2d at 1092. We find this logic unpersuasive, as defendants abused by the police during their interrogations may bring suit for violation of their Fourteenth Amendment rights. See Chavez, 538 U.S. at 773-74; Rex v. Teeples, 753 F.2d 840, 843 (10th Cir. 1985)("Extracting an

involuntary confession by coercion is a due process violation.")(citing Haynes v. Washington, 373 U.S. 503, 513-15) (1963) and Spano v. New York, 360 U.S. 315, 320-23 (1959)); Duncan v. Nelson, 466 F.2d 939, 944-45 (7th Cir.), cert. denied, 409 U.S. 894 (1972).

[108] *fn41 The defendants argue that the presiding judge or prosecutor is responsible and therefore liable for the constitutional violation; but, of course, judges and prosecutors enjoy absolute immunity for their judicial decisions and prosecutorial functions, respectively. Stump v. Sparkman, 435 U.S. 349, 356-57 (1978); Imbler v. Pachtman, 424 U.S. 409, 420 (1976). Whether an objectively reasonable officer could be aware, as he was improperly obtaining a suspect's statement, that he could be violating that individual's Fourteenth Amendment substantive due process rights is a separate question that we do not address, as LaCresha did not allege a violation of her Fourteenth Amendment rights. See Chavez, 538 U.S. at 773 (2003)("Our views on the proper scope of the Fifth Amendment's Self-Incrimination Clause do not mean that police torture or other abuse that results in a confession is

constitutionally permissible so long as the statements are not used at trial; it simply means that the Fourteenth Amendment's Due Process Clause, rather than the Fifth Amendment's Self-Incrimination Clause, would govern the inquiry in those cases and provide relief in appropriate circumstances.")(emphasis in original).

[109] *fn42 Sims v. Adams, 537 F.2d 829, 831 (5th Cir. 1976).

[110] *fn43 Monroe v. Pape, 365 U.S. 167, 187 (1961), over-ruled on other grounds, Monell v. Dep't of Soc. Serv. of City of New York, 436 U.S. 658 (1978)(holding that plaintiffs may sue municipalities for civil rights violations using § 1983).

[111] *fn44 Restatement 2d of Torts § 440-41 (1965).

[112] *fn45 475 U.S. 335, 345 n.7 (1986).

[113] *fn46 Malley, 475 U.S. at 345 n.7.

[114] *fn47 819 F.2d 1301, 1309 (5th Cir.

1987).

[115] *fn48 Gary v. Hand, 838 F.2d 1420, 1428 (5th Cir. 1988).

[116] *fn49 Id. at 1427-28.

[117] *fn50 See Thomas v. Sams, 734 F.2d 185, 191 (5th Cir. 1984) (holding a mayor who had falsely sworn an arrest warrant, then submitted the warrant to himself, as a magistrate, for issuance, did not break the chain of causation because he did not submit the warrant to a neutral party); Smith v. Gonzales, 670 F.2d 522, 526 (5th Cir. 1982) (holding that an officer who acted with malice in procuring a warrant or a indictment will not be liable if the facts supporting the warrant or indictment are put before an impartial intermediary such as a magistrate or a grand jury, for that intermediary's 'independent' decision 'breaks the causal chain' and insulates the initiating party); Rodriguez v. Ritchey, 556 F.2d 1185, 1193 (5th Cir. 1977)(en banc), cert. denied, 434 U.S. 1047 (1978).

[118] *fn51 See Shields v. Twiss, 389 F.3d 142, 150 (5th Cir. 2004)("[O]nce facts

supporting an arrest are placed before an independent intermediary such as a . . . grand jury, the intermediary's decision breaks the chain of causation". . .unless "the deliberations of that intermediary were in some way tainted by the actions of the defendants")(internal citations omitted); Gordy v. Burns, 294 F.3d 722, 728 (5th Cir. 2002)(reaffirming Hand); Taylor v. Gregg, 36 F.3d 453, 456 (5th Cir. 1994)("It is well settled that if facts supporting an arrest are placed before an independent intermediary such as a magistrate or grand jury, the intermediary's decision breaks the chain of causation for false arrest, insulating the initiating party.")(citations omitted).

[119] *fn52 Compare Kerman v. City of New York, 374 F.3d 93, 126 (2d Cir. 2004)(holding that police officer could be held liable for plaintiff's loss of liberty after police officer wrongly sent plaintiff to a mental hospital, even though the plaintiff's subsequent detention in the hospital resulted from the independent judgment of the physicians. "Tort defendants, including those sued under § 1983, are responsible for the natural consequences of their actions.")(citing, inter alia, Malley v. Briggs, 475 U.S. 335

(1986)); Herzog v. Village of Winnetka, 309 F.3d 1041, 1044 (7th Cir. 2002)("[T]he ordinary rules of tort causation apply to constitutional tort suits" after a suspect was illegally forced to give blood and urinate as a result of an illegal arrest)(internal citation omitted); Zahrey v. Coffey, 221 F.3d 342, 352 (2d Cir. 2000)("[I]t is not readily apparent why the chain of causation should be considered broken where the initial wrongdoer can reasonably foresee that his misconduct will contribute to an 'independent' decision that results in a deprivation of liberty."); Warner v. Orange County Dep't of Probation, 115 F.3d 1068, 1072-73 (2d Cir. 1996)(concluding that, as a sentencing judge's adoption of probation officers' recommendation was entirely foreseeable, the judge's decision did not break the chain of causation with respect to the probation officers' liability under § 1983); and Buenrostro v. Collazo, 973 F.2d 39, 45 (1st Cir. 1992)(holding that, as "the Supreme Court has made it crystal clear that principles of causation borrowed from tort law" apply to constitutional torts, a jury "could conceivably find a causal nexus between [an] unlawful arrest and [a] consequent imprisonment," even after an independent magistrate determined that

there was probable cause to detain the plaintiff)(citing Malley, 475 U.S. at 345 n.7) with Egervary v. Young, 366 F.3d 238, 248 (3d Cir. 2004)("To the extent that the common law recognized the causal link between a complaint and the ensuing arrest, it was in the situation where "misdirection" by omission or commission perpetuated the original wrongful behavior.")(citing Hand, 838 F.2d at 1428); Townes v. City of New York, 176 F.3d 138, 147 (2d Cir. 1999)(holding chain of causation broken between police officers' illegal search and seizure and plaintiff's subsequent conviction and imprisonment); Smiddy v. Varney, 665 F.2d 261, 266-68 (9th Cir. 1981)(holding police officers not liable for damages once prosecutor made independent decision to charge plaintiff); Duncan v. Nelson, 466 F.2d 939, 943 (7th Cir. 1972)(holding that no § 1983 cause of action exists for violation of Fifth Amendment rights resulting from admission into evidence of a coerced confession as officers did not proximately cause the violation); Crowe v. County of San Diego, 303 F. Supp.2d 1050, 1092 (S.D. Cal. 2004) ("Given the roles and obligations of prosecutors and judges and the independent nature of these positions, a police officer could not

reasonably know that by obtaining a coerced confession he will cause a prosecutor and/or a trial judge to violate a defendant's Fifth Amendment privilege against self-incrimination."). See also Hector v. Watt, 235 F.3d 154, 161 (3d Cir. 2000)(declining to reach the question of whether proximate cause prevented a § 1983 plaintiff from suing police officers for fabricating evidence as "there is a great deal of tension in the caselaw about when official conduct counts as an intervening cause.").

[120] *fn53 We emphasize again that our analysis does not apply to Fourteenth Amendment claims brought by plaintiffs against officials that attack the lawfulness of the interrogation itself. See Chavez v. Martinez, 538 U.S. 760, 773-74 (2003).

[121] *fn54 In re L.M., 993 S.W.2d 276, (Tex. App.– Austin, 1999)(pet. denied).

[122] *fn55 Massey v. Armco Steel Co., 652 S.W.2d 932, 934 (Tex. 1983).

[123] *fn56 Juhl v. Airington, 936 S.W.2d 640,

644 (Tex. 1996).

[124] *fn57 As the Texas Tort Claims Act does not waive the State's immunity for civil conspiracy suits or other intentional torts committed by officials in their official capacity, the district court correctly dismissed claims brought against the defendants in their official capacities. TRST Corpus, Inc. v. Financial Ctr., Inc., 9 S.W.3d 316, 322 (Tex. App. -- Houston [14th Dist.] 1999, writ denied)(citing Tex. Civ. Prac & Rem. Code § 101.021 (2004), which enumerates the causes of action for which the state has waived immunity, but not including civil conspiracy). Accordingly, we address only state conspiracy claims brought against the defendants in their individual capacities.

[125] *fn58 Roe v. Tex. Dep't of Protective & Regulatory Serv., 299 F.3d 395, 413 (5th Cir. 2002).

[126] *fn59 Univ. of Houston v. Clark, 38 S.W.3d 578, 580 (Tex. 2000).

[127] *fn60 City of Lancaster v. Chambers, 883

S.W.2d 650, 653 (Tex. 1994).

[128] *fn61 Id. at 654 (citation omitted).

[129] *fn62 Id. at 656.

[130] *fn63 Id. at 658.

[131] *fn64 Id.

[132] *fn65 Id. at 655.

[133] *fn66 Roe v. Tex. Dep't of Protective & Regulatory Serv., 299 F.3d 395, 413 (5th Cir. 2002).

[134] *fn67 See Chambers, 883 S.W.2d at 656.

[135] *fn68 Kelly v. Diocese of Corpus Christi, 832 S.W.2d 88, 95 (Tex. App. —— Corpus Christi 1992, writ dism'd w.o.j.).

[136] *fn69 Hopt v. Utah, 110 U.S. 574, 584-85 (1884).

[137] *fn70 Bruton v. United States, 391 U.S. 123, 140 (1968) (White, J., dissenting).

[138] *fn71 Stephen A. Drizin & Richard A. Leo, The Problem of False Confessions in the Post-D.N.A. World, 82 N.C.L. Rev. 891, 923 (2004). "Regardless of how often police elicit confessions from the innocent, the social science literature strongly suggests that interrogation-induced false confessions are highly likely to lead to the wrongful conviction of the innocent, perhaps more so than any other type of erroneous evidence. This is due to the strong effect that confession evidence exerts on the perceptions and decision-making of criminal justice officials and lay jurors. With the exception of being captured during the commission of a crime (whether by physical apprehension or electronically on videotape), a confession is the most incriminating and persuasive evidence of guilt that the State can bring against a defendant. It therefore stands to reason that with the exception of being falsely captured during the commission of a crime, a false confession is the most incriminating and persuasive false evidence of guilt that the State can bring against a defendant." Id. at 921.

[139] *fn72 Hopt, 110 U.S. at 584.

[140] *fn73 Jackson v. Denno, 378 U.S. 368, 385-86 (1964); In re Gault, 387 U.S. 1, 45 ("The principle, then, upon which a confession may be excluded is that it is, under certain conditions, testimonially untrustworthy. . .")(emphasis in original)(quoting 3 Wigmore, Evidence § 822 (3d ed. 1940)).

[141] *fn74 In re Gault, 387 U.S. at 47.

[142] *fn75 Spano v. New York, 360 U.S. 315, 320-21 (1959).

[143] *fn76 In re Gault, 387 U.S. at 55.

20050331

No. 05-396

In The Supreme Court of the United States

LACRESHA MURRAY, ET AL.,

Petitioners,

v.

RONNIE EARLE, ETC., ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

DAVID A. ESCAMILLA
Travis County Attorney
Travis County, Texas
P.O. Box 1748
Austin, Texas 78767
(512) 854-9513 telephone
(512) 854-4808 facsimile
By: ELAINE A. CASAS*
Texas State Bar No. 00785750
JENNIFER KRABER
Texas State Bar No. 24027426

Attorneys for Respondents Dayna Blazey and Stephanie Emmons

**Counsel of Record*

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

RESTATEMENT OF PETITIONER'S QUESTION(S):

1. Did the Fifth Circuit properly reverse the district court's denial of Defendants' (government employees sued in their individual capacities) Motion for Summary Judgment where Defendants' Motion was based on their assertion that they were entitled to qualified/official immunity as a matter of law to Plaintiff's claim pursuant to 42 U.S.C. §1983 for violation of the Fifth Amendment?

The central issue as framed by the Fifth Circuit was:

2. Given that an officer cannot contemporaneously interrogate a suspect unlawfully and violate a suspect's *Fifth Amendment* rights, should clearly established law have alerted a reasonable official that his pre-trial conduct, although perhaps a but-for cause of the plaintiff's trial rights, could proximately cause a violation of plaintiff's *Fifth Amendment* rights? *Murray v. Earle*, 405 F.3d 278, 289 (5th Cir. 2005).

QUESTION AS PRESENTED BY PETITIONER:

Can the Fifth Circuit apply the Texas common law doctrine of intervening cause to a trial court's decision to admit unconstitutionally obtained evidence in order to circumvent undisputed state actor liability under 42 U.S.C. §1983?

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I. STATEMENT OF THE CASE

Defendants Dayna Blazey and Stephanie Emmons ("Defendants"[1]) were sued in their individual capacities as Assistant District Attorneys in Travis County, Texas.[2] All of Plaintiff's causes of action against these Defendants were dismissed via motion to dismiss or motion for summary judgment except for:

1) the 42 U.S.C. §1983 individual capacity claims against them for violation of Plaintiff's rights under the Fifth Amendment, and

2) the individual capacity claims against them for civil conspiracy under Texas law.

The district court denied Defendants' Motion for Summary Judgment despite Defendants' assertion, argument, and evidence at the district court level that they were entitled to summary judgment based on qualified immunity, despite the Plaintiff's failure to attach any evidence to her Summary Judgment Response, and despite the Plaintiff's failure to object to Defendants' Summary Judgment Evidence. Pet. App. C, p. 40. The district court's refusal to grant Defendants' Motion for Summary Judgment

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[1] The City of Austin and police officer Defendants are employed by a separate governmental entity, and are represented by separate counsel.

[2] Plaintiff alleges that Emmons and Blazey advised police to act unconstitutionally regarding the questioning of Murray. However, the uncontroverted summary judgment evidence establishes that Blazey did not meet with or specifically advise law enforcement regarding the questioning of Murray. Although Emmons did meet with homicide detectives, the summary judgment evidence proves that their conversation focused on how to question a juvenile who was not in custody. See affidavits of Blazey and Emmons. [R.E. tab 4 (Rec. Vol. 7, pp. 1563-69)]

led to an interlocutory appeal wherein the Fifth Circuit reversed the district court's denial of Defendants' Motion for Summary Judgment on the two causes of action listed above. See, Pet. App. D; *Murray v. Earle*, 405 F.3d 278 (5th Cir. 2005).

In reviewing the district court's denial of Defendants' Motion for Summary Judgment, the Fifth Circuit focused on the following issue:

> Given that an officer cannot contemporaneously interrogate a suspect unlawfully and violate a suspect's *Fifth Amendment* rights, should clearly established law have alerted a reasonable official that his pre-trial conduct, although perhaps a but-for cause of the plaintiff's trial rights, could proximately cause a violation of plaintiff's *Fifth Amendment* rights?

Murray v. Earle, 405 F.3d 278, 289 (5th Cir. 2005). In reaching its conclusion, the Fifth Circuit combined its analysis regarding the prosecutor defendants and the city/police defendants and held that "[i]n this circuit, ***it was not well established at the time of LaCresha's interrogation that*** an official's pre-trial interrogation of a suspect could subsequently expose that official to liability for violation of a suspect's Fifth Amendment rights at trial." *Murray v. Earle*, 405 F.3d at 293 (emphasis added). Then, in elaborating on its holding, the Fifth Circuit explained that "[w]e hold that as in the analogous context of *Fourth Amendment* violations, an official who provides accurate information to a neutral intermediary, such as a trial judge, cannot "cause" a subsequent *Fifth Amendment* violation arising out of the neutral intermediary's decision, even if a defendant can later demonstrate that his or her

statement was made involuntarily while in custody." *Murray v. Earle*, 405 F.3d at 293. The court explained that the state judge's admission of Murray's confession into evidence constituted a "superceding cause" of Murray's injury, relieving the Defendants of liability under §1983. *Murray v. Earle*, 405 F.3d at 293. Then, after previously stating that Murray's right was not clearly established in the Fifth Circuit, the court further explained that its holding regarding superceding cause "pretermits our consideration [of] whether she suffered a violation of a constitutional right that was clearly established at the time, and whether a reasonable official should have known that he was violating that right. Accordingly, we reverse the district court's denial of qualified immunity for the Defendants on LaCresha's Fifth Amendment claim." *Murray v. Earle*, 405 F.3d at 293.

II. REASONS FOR DENYING THE WRIT

A. The Fifth Circuit Opinion is not in "Direct Conflict with the Holding of the United States Supreme Court Regarding 42 U.S.C. §1983, the Fifth Amendment, or the Law of Every Other Circuit that has Considered the Issue of this Case." See Pet., p. 13.

The Fifth Circuit's decision is correctly limited to Fifth Amendment claims for civil damages. The opinion is consistent both with prior United States Supreme Court and Circuit rulings on the issue of when and how the Fifth Amendment can be violated and consistent with legal precedent regarding the qualified immunity analysis. Petitioner, however, repeatedly confuses the issue of whether evidence should be suppressed under the Fifth

Amendment with the issue of whether there was clearly established law at the time of LaCresha's interrogation that an official's pre-trial interrogation of a suspect could subsequently expose an official to liability for violation of a suspect's *Fifth Amendment* Rights at trial.

Although the Fifth Circuit draws an analogy to Fourth Amendment cases, it correctly limits its holding in the case to the Fifth Amendment context. Its holding is consistent with the United States Supreme Court's decision in *Chavez v. Martinez* which explains that the Fifth Amendment *Privilege* against self-incrimination is a fundamental *trial right* which can be violated only at trial, even though pre-trial conduct by law enforcement officials may ultimately impair that right. See *Murray v. Earle*, 405 F.3d at 285, *citing Chavez v. Martinez*, 538 U.S. 760, 767 (2003). The court then correctly concluded that because an officer cannot contemporaneously interrogate a suspect unlawfully and violate a suspect's *Fifth Amendment* Rights, a reasonable official could not have been alerted by clearly established law that his pre-trial conduct, although perhaps a but-for cause of the violation of plaintiff's trial rights, could proximately cause a violation of plaintiff's *Fifth Amendment* Rights. The Fifth Circuit specifically explains that the question regarding the *Fifth Amendment* was an entirely separate question from whether an objectively reasonable officer could be aware that he was violating that individual's *Fourteenth Amendment* substantive due process rights. *Murray v. Earle*, 405 F.3d at 285, 290. As the court explained, the issue of the Fourteenth Amendment was not before the Fifth Circuit. *Id.*

Because of the unique status of the Fifth Amendment as a privilege meant to protect an individual *at trial*, the cases cited by petitioner regarding the Fourth Amendment cannot be directly analogized. Further, although petitioner attempts to perform a proximate cause analysis under Texas law, the Fifth Circuit primarily relied on federal precedent and tort common law as it has been applied to 42 U.S.C. §1983.

B. The Summary Judgment Record does not Support Petitioner's Basic Allegations against Emmons and Blazey.

In support of their Motion for Summary Judgment, Defendants Blazey and Emmons presented their own affidavits that set out the facts relating to each of them respectively, and an affidavit by District Attorney Ronald Earle. **[R.E. tab 4 (Rec. Vol. 7, pp. 1558-1569)]** Defendant Blazey's affidavit established that Dayna Blazey was an Assistant District Attorney who had been practicing law since 1988 and who held a position as an Assistant District Attorney since 1989. **[R.E. tab 4 (Rec. Vol. 7, p. 1563)]** At the time of Jayla Belton's death and the resulting prosecutions of LaCresha Murray, Blazey held the position of Chief Prosecutor on the Child Protection Team. **[Id.]** She had been the Chief Prosecutor on the Child Protection Team since 1995. In her role as Chief Prosecutor of the Child Protection Team, Blazey is routinely notified by Law Enforcement or Child Protective Services ("CPS") when there is an unexplained or unexpected death of a child in Travis County. At that time she is provided preliminary information and notified that an investigation has been initiated by CPS and Law Enforcement. Blazey's

sworn affidavit indicates that she recalls receiving several pages from the City of Austin Police Department ("APD") on the Friday night of Memorial Day weekend in 1996. [Id., p. 1564] She returned the pages and spoke with Sergeant Hector Reveles, a City of Austin Police Detective, and he provided information on a child death investigation that was being conducted by APD Homicide. [Id.] Reveles informed Blazey of the death of Jayla Belton, a two-year-old child, and told her that there were people in the house with her immediately proceeding her death. [Id.] After this initial phone contact with Reveles, Blazey stayed in contact with him periodically by phone throughout the weekend. [Id.] Blazey recalls being informed at some point that some of the individuals present at the house immediately proceeding Jayla Belton's death were children under twelve (12) years of age, and that they would need to be interviewed at the Children's Advocacy Center.[3] The Children's Advocacy Center is a non-profit member agency of the Child Protection Team, and is a place where witnesses and victims twelve (12) years of age and younger can be interviewed on videotape. [Id.] Although Blazey states that she would typically be involved to some extent in coordinating interviews with child witnesses, she indicates that, in this specific case, she did not participate in coordinating the interviews. [Id.] Blazey states that she was out of town on Saturday, and that she does not recall providing any input into the interview process. She further states that she was informed of the substance of the

[3] These interviews are not the subject of Plaintiff's Complaint. Plaintiff's Complaint stems from the questioning of LaCresha Murray at the Texas Baptist Children's Home. [Rec. Vol. 2, p. 321]

interviews after the fact. [Id.] Blazey recalls that at that time it was not clear what had happened to Jayla Belton. [Id.]

Blazey also recalls that at some point that weekend she was informed that the autopsy results indicated that Jayla Belton's death was a homicide, as she sustained significant liver laceration. [Id.] Blazey was also notified that CPS had removed all of the children from the Murray home and that some of them were placed at the Texas Baptist Children's Home. Blazey remembers that because of the Memorial Day holiday on Monday, she was aware that on Tuesday morning she would need to file a petition in a Suit Affecting the Parent/Child Relationship on behalf of CPS. Blazey states that this is routinely done in order to give CPS temporary managing conservatorship of the children. [Id.]

Although Blazey does not remember directly discussing the questioning of LaCresha Murray with homicide detectives or police officers, she states that she remembers having some discussion with another attorney in the District Attorney's Office about whether LaCresha Murray's being in CPS care invoked the magistration requirements of a juvenile suspect under the Texas Family Code. [Id.] At that time, based on Blazey's education and experience and based on her evaluation of the situation, it was her opinion that there was not a legal requirement for magistration of LaCresha Murray based solely on the fact that CPS had legal custody. As Blazey understood it, Murray was not being held in a detention facility, and it was her good faith interpretation of the law that CPS' taking legal possession of a minor did not equate to a detention as set out in the Texas Family Code. [Id.] Blazey

states that, to her knowledge, there was no Texas Law at that time that contradicted her opinion in this factual situation. [Id.]

Contrary to Plaintiff's allegations, Blazey states in her affidavit that she did not discuss or implement a plan to interrogate LaCresha Murray alone. [Id., p. 1565] Blazey states that she was never on the premises during any interview with LaCresha Murray, and that she did not participate in any interview with LaCresha Murray. Further, Blazey states that she did not review any questions and did not provide any specific questions to law enforcement for use in the interview with LaCresha Murray or her family members. [Id.] In fact, Blazey states that at the time of her brief involvement in this case, no criminal adversarial proceedings were initiated or pending. [Id.] Blazey states she had no information or reason to believe that LaCresha Murray was allegedly being subjected to violations of her Fifth Amendment Rights. Blazey states she never had any personal interaction with Murray or any of the other plaintiffs. [Id.] Further, Blazey states that all of her actions taken in relation to LaCresha Murray and the other plaintiffs were objectively reasonable under the circumstances, taken in good faith in the course and scope of her employment, and within her responsibilities and role as a prosecutor. [Id.] Blazey states that she never took any action relating to Murray with the intent to violate her constitutional or statutory rights or with deliberate indifference towards her rights. [Id.] Blazey affirmatively states that she did not conspire with anyone to violate any of Murray's constitutional or statutory rights. [Id.]